TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted] 181

W. FISH WILSON, COUNTY COLLECTOR OF TAXES FOR THE COUNTY OF MARION; RICHARD FARRELL, COUNTY COLLECTOR OF TAXES FOR THE COUNTY OF CLINTON, *ET AL.*, APPELLANTS,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELER, AS RECEIVER, ETC., *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

FILED OCTOBER 5, 1922.

(29,185)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

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INDEX.

	Original.	Print.
Caption to record from U. S. district court for the eastern district of Illinois	1	1
Bill of complaint	3	2
Notices of application for preliminary injunction	44	48
Order allowing preliminary restraining order	51	51
Temporary restraining order	54	53
Subpœna in chancery and service	57	55
Preliminary injunction order	60	57
Motion to dissolve temporary injunction	63	58
Order settling cause for hearing	67	60
Order overruling motion to dissolve	71	61
Answer	73	62
Stipulation and order appointing special master	101	76

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	Original.	Print.
Motion to set aside order of reference, etc	105	78
Order granting motion to set aside order of reference and for leave to withdraw answer and denying motion to dismiss bill of complaint	108	79
Motion for entry of decree	111	80
Decree	113	81
Petition for appeal	118	86
Assignment of errors	121	87
Order allowing appeal and fixing bond	125	90
Bond on appeal	128	91
Præcipe for transcript	135	95
Motion for extension of time	138	97
Order extending time	142	98
Clerk's certificate	146	99
Citation and service	147	100

1 Pleas in the District Court of the United States within and for the Eastern District of Illinois at a regular term thereof held in the United States Court Room, in the City of East St. Louis, in said District, before the Honorable George W. English, Judge of said Court, on the first Monday (being the 1st day) of May, in the year of our Lord one thousand nine hundred twenty-two, and of the Independence of the United States of America the one hundred and forty-sixth year.

2 In the District Court of the United States for the Eastern District of Illinois.

In Equity.

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, William W. Wheelock, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Be it remembered that heretofore, to-wit, on the 3rd day of June, A. D. 1921, came the above named Complainants, by Geo. B. and Geo. M. Gillespie, their Solicitors, and filed their Bill of Complaint against the above named defendants, which said Bill of Complaint was and is in the words and figures following, to-wit:

3 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY, William W. Wheelock, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

To the Honorable Geo. W. English, Judge of the United States District Court for the Eastern District of Illinois:

Your Orators, the Complainants, respectfully represent and show unto your Honor:

That this is a suit of a civil nature and the matter and sum in controversy exceeds, exclusive of interests and costs, the sum and value of $3,000.00, and the subject-matter and parties defendants are located and reside in the Eastern District of the United States Court of the State of Illinois.

4 I.

That the Illinois Southern Railway Company is a corporation duly organized under the Railroad Incorporation Act of the State of Illinois; that William W. Wheelock was by a decree of the United States Circuit Courts for the Northern District of Illinois, Eastern Division, the Eastern District of Illinois and the Eastern District of Missouri duly appointed receiver in certain foreclosure proceeding in said courts and continued to operate the property of the Illinois Southern Railway Company hereinafter described until the operation thereof ceased as hereinafter stated, and is still such receiver not having been discharged from his trust; that by virtue and under authority of decree of foreclosure in the District Courts of the United States for the Northern District of Illinois, Eastern Division, in Equity No. 1113, the Eastern District of Illinois, in Equity No. 1369, and the Eastern District of Missouri, Eastern Division, in Equity No. 5060, referred to in said proceedings as consolidated causes, on September 15, 1920, Herbert A. Laundahl, as Special Master, appointed

by said courts in said causes for that purpose, struck off and sold the property hereinafter described pursuant to the decrees in said causes and the said William T. Abbott became the purchaser of said property as the representative of the bondholders under the mortgages or deeds of trust in said consolidated equity causes; that thereafter by certain articles of agreement of the date of February 5, 1921, pursuant to the provisions of said decree and certain other articles of assignment made, executed and delivered to the Missouri and Illinois Railroad Company, the said William T. Abbott, as such purchaser at said sale, conveyed and vested title of said railroad property hereinafter described in the complainant, the Missouri and Illinois Railroad Company, as the assignee of the said purchaser; and as the grantee of the said Illinois Southern Railway Company, Festus J. Wade of Missouri and First Trust & Savings Bank, a corporation organized and existing under the laws of the State of Missouri as trustees under the first mortgage or deed of trust of the said railway company dated June 1, 1911, and Breckenridge Jones and the Missouri and Illinois Trust & Savings Bank, a corporation existing under the laws of the State of Illinois, trustee under the income mortgage or deed of trust of the said Railway Company dated June 1, 1911, and William T. Abbott as purchaser of said properties at said foreclosure sale, released their several interests in said property to the Missouri & Illinois Railroad Company.

II.

That the complainants herein are respectively the duly elected and acting County Collectors of taxes for their respective counties as stated in the margin.

III.

That the complainant, Illinois Southern Railway Company, subject to the mortgages and receivership aforesaid has since prior to 1917 been in possession and operating a railroad with appurtenances extending from Salem in the County of Marion through the counties of Marion, Clinton, Washington, Perry and Randolph to a point in the City of Chester in Randolph County, State of Illinois, and thence by ferry across the said river to Little Rock Landing in Ste. Genevieve County, Missouri, thence to the City of Bismarck, in the State of Missouri, particularly described as follows:

"All and singular the lines of railway of the Company commencing at the City of Salem, in Marion County, Illinois, and extending in a general southwesterly direction through the Counties of Marion, Clinton, Washington, Perry and Randolph, to the City of Chester, Illinois, and from Missouri Junction, a point on the said line in Randolph County, to a point on the Mississippi River, in said County, known as Moro Incline, and thence by a steam ferry across said river to Little Rock Landing, in Ste. Genevieve County, Missouri, and thence southwesterly by way of the City of Ste. Genevieve, and

through said county and the County of St. Francois, in the State of Missouri, to the City of Bismarck, Missouri; also a certain branch extending from the main line at Sparta in Randolph County, Illinois, to a point near Roxboro, in said county; also the line extending from a point near Moro Station, Randolph County, Illinois, to a point on the Mississippi River known as Kellogg Incline, in said
6 county, together with all property connected with and appurtenant to said line of railroad, and all other property of the party of the first part, wherever situate or being, whether the same be rights of way, rights of connection with other railroads, real estate, easements, buildings, fixtures, track, incline track, approaches, track material, rails, ties, boats, boat riggings, tunnels, vioducts, bridges, trestles, culverts, fences, tools, station houses, depots, platforms, tool houses, water tanks, reservoirs, houses, engine houses, machine shops, shop tools, locomotives, tenders, cars, engines, personal property contracts, ordinances, leases, choses in action, rents, profits, income and all and all manner of real estate and interests therein, and all and all manner of mixed or personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the Company, or which may at any time hereafter during the continuance of this trust be acquired by the Company; also all books of record and accounts of every kind and description, and all papers, maps, inventories and documents in anywise referring or relating to the property and franchises hereby conveyed; also all franchises and property and all rights or interests in franchises or property of every kind and description, real, personal or mixed, wherever the same may be situate, that may be now owned or that may at any time after the date of this indenture be acquired by or for the Company, all of which it is hereby covenanted, shall inure by way of accretion to the benefit and advantage of the Trustees, and by way of further and better security hereunder, together with the rents, issues and profits thereof, and all other appurtenances of the lines of railroad above described.

"All engines, tenders, cars and other rolling stock and equipment; all rights of way, station and depot grounds; all tunnels, roadbeds, spurs, double tracks, turnouts, side-tracks, switches and turntables; all superstructures, bridges, viaducts, boats, ferries, stringers, ties, rails, tracks, frogs, chairs and bolts; all telegraph and telephone lines, poles, block signals, wires and instruments; all terminals and terminal properties; all station houses, warehouses, engine houses, freight houses, inclines, platforms, approaches, coal houses, car houses, machine shops and other shops and structures, water stations, water tanks and water supply; all fences, wharves and docks; all machinery, tools, implements, furniture, materials and supplies; all lands designed for depots, stations, warehouses or other structures; all leaseholds, leases, rights under leases or contracts, and all trackage agreements or operating agreements of every kind or description; and all other property, real, personal and mixed; of the Railway Company or its successors, appurtenant to or used, or acquired for use, in connection with said lines of railway which are above described or which now are, or may at any time be subject to the lien hereof; and any and all additions, improvements and better-

ments, now or hereafter made to, or constructed upon, any lines of railway, extensions, branches, telegraph and telephone lines, or other properties, now or at any time hereafter subject to the lien hereof; and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railway Company of, in and to the said railways, premises and property, and every part and parcel thereof, and all corporate or other rights, privileges and franchises, appurtenant or hereafter to appertain thereto; whether the Railway Company now owns, or it or
7 its successors hereafter shall acquire, such property.

"Any and all lines of railway, extensions and branches, any and all real property, and any and all other property of every kind and description, including corporate rights and franchises, whether herein specifically described or not, now owned or hereafter acquired by the Railway Company, whether under its present powers, privileges or authority or under any power, privilege or authority that the Railway Company may hereafter secure or that hereafter may be conferred upon or vested in it, and any and all the rents, issues, profits, tolls and other income of all lines of railway, extensions, branches and other property now or at any time hereafter subject to the lein of this indenture.

"Any and all other property of every kind and nature, including stocks and bonds, from time to time hereafter, by delivery or by writing of any kind, for the purpose hereof conveyed, mortgaged, pledged, assigned or transferred, by the Railway Company or by any one in its behalf, or with its written consent, to the Trustees or the corporate Trustee, who are hereby authorized to receive any such property at any and all times as and for additional security. Any such conveyance, mortgage, pledge assignment or transfer by the Railway Company or by any one on its behalf, or with its written consent, pursuant to the provisions of this clause, of any bonds, stocks or other property, not subject hereto or agreed to be subjected hereto, as and for additional security, may be made subject to any reservations, limitations, conditions and provisions which shall be set forth in an instrument in writing then to be executed by the Railway Company, or the person or corporation conveying, assigning, mortgaging, pledging or transferring the same, and by the Trustees or the corporate Trustee, respecting the use, management and disposition of such bonds, stocks or other property and the proceeds thereof."

That the Centralia and Chester Railroad Company formerly owned the Illinois portion of said railroad and operated the same from about 1892 until May 16, 1900 when the same was purchased from John R. Walsh who had acquired the same; that the line from Ste. Genevieve to Bismarck, Missouri, 42 2/10 miles in length was built in the years 1901 and 1903 and the continuous line from Salem, Illinois, to Bismarck, Missouri, approximately 136 miles in length, was opened up as one property about August 1903; that the territory served by said railroad company in Illinois is in part agricultural and coal mining and that in Missouri general mining with some few industries scattered along the line both in Illinois and Missouri, but after the said

road was opened up it was never patronized to an extent that would enable it to earn operating expenses and fixed charges and the
8 greater portion of said time it was unable to earn operating expenses; and, has never paid a fair return on the actual investment in said road, nor even a fair return on any sum or amount for which the property was capable of being dismantled and removed and sold in parts for other uses in the open market; that the moneys produced by the sale of bonds which became a lien upon said property was economically expended and went into the property and during that period practically $4,200,000.00 has been put into the property in an effort to build up, maintain and operate the same as a producing property; that in the equity suits as aforesaid heard as consolidated causes, the facts in relation to the financial condition and operations of said railway, its want of ability to earn operating expenses, and the ability of its stockholders to maintain and operate it as a commercial railroad and common carrier was fully alleged and proved and a part of the prayers of the bills in said cause was for a sale of said property with permission to the purchase or purchasers to dismantle and remove separate parts and sell them as junk, discontinue the operation of the railway and sell the right of way to be used for other purposes and apply the proceeds of such sale on the payment of the bonded indebtedness and other legal obligations as to equity may pertain; that various persons owning and operating industries along the line of said railroad were permitted to intervene and be heard in the interest and with the object to continue the operation of the same as a common carrier, but notwithstanding all the evidence they were able to offer to that end it was found by the said courts that said property as a railroad was incapable of being so operated and a decree for a sale thereof was entered in accordance with the prayers of the bills with provisions however intended to keep the same in operation in some form, if possible, in the interest of the public welfare on nominal value and capital investment to be
9 paid by the purchasers thereof; that the decree in said cause was entered on the 26th day of June 1920 nunc pro tunc as of the 27th day of May 1920, and your orators aver that the financial condition of the situation and the prospects of said road, the value of its said property and the fair cash market value thereof for the purpose of assessment and taxation under the laws of the State of Illinois were not substantially different at that time from what they had been at any of the several times when valued and assessed as hereinafter stated in the years 1917 to 1920 inclusive; that during all of said time the said property was not worth at a fair market value or at a fair cash value for the purpose of assessment and taxation as the full value thereof in contemplation of the laws of Illinois to exceed $600,000.00 and the part thereof in the State of Illinois was not worth to exceed the sum and value for said purposes exceeding $500,000.00; that the facts in relation to the value of said property were of public notoriety and a matter of common knowledge with all of the citizens and public officials of the State of Illinois, including the Board of Equalization and the Tax Commission of said State; that during said years the taxes on said property were not paid and although the said

property was advertised and offered for sale for taxes no one bid thereon, but the said property under the provisions of the law forfeited to the State for want of bidders.

IV.

That in the years 1917 to 1918 inclusive said State Board of Equalization, and in the years 1919 and 1920 said State Tax Commission, the successor of said State Board of Equalization, pretended to value and assess the said property located in the State of Illinois for the purposes of taxation, and it was the duty of the said Board and said Commission in making such valuation and assessments to inquire into the question of the full fair cash value of said property, consider the elements of value thereof and ascertain and fix the fair cash value of same on a mileage basis or upon some other reasonable basis and then equalize the same by reducing or raising the value for assessment of said property above or below the actual fair cash value thereof to attain the same rate of valuation as that upon which other property of the State of Illinois was valued and assessed by the local assessors for the said years, and then take as the assessed value thereof for each of said years such part of the sum attained by such equalization as the assessed value pursuant to the provisions of the statutes of the said state requiring that for the years 1917 to 1918 inclusive one-third of the full fair cash value should be taken and requiring that for the years 1919 and 1920 one-half of the full fair cash value should be taken as the assessed value of all property in the state including that property of railway corporations known as "railroad track" and "rolling stock;" that said assessment is required by the statutes of the State of Illinois to be based upon a return made to the auditor of public accounts for the first two years aforesaid and to the said Tax Commission for the years 1919 and 1920 pursuant to the provisions of section 48 of the Revenue Laws of the said state; that said Illinois Southern Railway Company and its said receiver did in fact make such returns as are required by said section for each of said years and in said returns fixed the full fair cash value of its said property as follows:

For the year 1917	$345,494.00
For the year 1918	345,439.00
For the year 1919	345,601.00
For the year 1920	345,162.00

That notwithstanding the full fair cash value of said property was stated in said returns and verified for each of said years as required by law, and notwithstanding the values stated in said returns were in fact the full fair cash value of said properties for each of said years, and notwithstanding that an honest and open minded inquiry into the question of the full fair cash value of said property would have verified the said returns for each of said years and that there were no facts in existence to be ascertained by inquiry or inve-tigation to the contrary of said returns, nevertheless the Board of

Equalization on each of the first two of said years and the said Tax Commission in the years 1919 and 1920 in total disregard of their respective duties and obligations as public officials neglected and refused to make any inquiry into the facts to ascertain the truth in relation to said returns and the values stated and verified therein, or independently thereof the full fair value thereof but fraudulently, wilfully and arbitrarily without the exercise of any judgment whatsoever in relation to the full fair value of said property and without equalizing the same so as to put its assessment on the same basis as other lands, lots and other properties of like character were assessed by the local assessors of the State, valued and assessed the said property at a grossly extortionate and excessive rate far in excess of that applied to all other property of the state and fixed grossly excessive full values thereof for each of said years and assessed the same at grossly excessive, discriminatory value and rates, that is to say, that on each of said years the following values were so fraudulently and unlawfully fixed by the said Board of Equalization and the said Tax Commission as the full values of said property, in Illinois, to-wit:

For the year 1917	$2,045,097.00
For the year 1918	2,048,898.00
For the year 1919	1,872,786.00
For the year 1920	1,269,576.00

That for each of the said years the values fixed by the said Tax Commission and the said Board of Equalization were excessive in at least the following ratios, namely, for the year 1917, 5.82 times the full value; for the year 1918, 5.93 times the full value; for the year 1919, 5.42 times the full value; and for the year 1920, 3.67 times
12 the full value; that said Board and said Commission for each of said years fixed and assessed on the basis of said excessive fraudulent full valuations as the total assessed value of said property in the State of Illinois the following sums:

For the year 1917	$681,699.00
For the year 1918	682,966.00
For the year 1919	936,383.00 and
For the year 1920, the sum of	634,788.00

That said values so fixed and determined as the assessed values were pretendedly by the said Board and said Commission for the years respectively 1917 and 1918 inclusive, one-third of the full fair cash value of said property, and for the years 1919 and 1920 one-half of the full, fair cash value of said property, whereas in truth and in fact on each of said years the values so fraudulently and arbitrarily fixed by said Board and said Commission far exceeded the actual full fair cash value of said property and was as said Board and Commission by reasonable investigation would have known, many times the fair value thereof; that in making said valuations and assessments the said Board and said Commission without any pretense of equalizing said property as assessed by local assessors for said years on each of the said years so wantonly and grossly overvalued said prop-

erty without giving any attention whatever to the elements entering into the value thereof and so grossly disregarded their duty in making said valuations and disregarded the rules of the said Board and said Commission in valuing other properties of like character that the valuations and assessments fixed by them on each of said years were fraudulent and void, unjustly discriminated against said railroad companies and the other of your orators that they were denied the equal protection of the laws of the State of Illinois in violation of the Fourteenth Amendment to the Federal Constitution.

V.

That in each of said years the local assessors of the State of Illinois made assessment of all of the other property, except railroad
13 property and such property as was required to be assessed by the said Board of Equalization and the said Tax Commission; that the method adopted by the full said local assessors was to ascertain and determine the full fair cash value of each item of property to be assessed and then reduce the amount so fixed by an arbitrary method to a figure less than 70% of the full fair cash value of the property as fixed by the said local assessors, and then take the amount so ascertained as the full fair cash value of each item of property assessed, and then assess the same at one-third of the value so fixed for the years 1917 to 1918 inclusive and at one-half of the value so fixed for the years 1919 and 1920; that it was the duty of the said Board of Equalization and the said Tax Commission on each of said years to take notice of the method of assessing all other property of the state than railroad property and assess railroad property upon the same basis by the application of the same methods by which all other property of the state was assessed for each of said years; but that the said Board of Equalization and the said Tax Commission well knowing the method applied by the local assessors in each of said years in making assessments of all other property of the state, nevertheless in the assessment of the property of the complainant railway companies disregarded said method and arbitrarily fixed the values aforesaid thereby discriminating against the said railway companies and the other complainants and assessing their property at the grossly excessive valuation aforesaid, in violation of section 1, article 9, of the Constitution of the State of Illinois, which requires that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct and not otherwise, by means whereof your orators were in making said assessment denied the equal protection of the law and by the action of
14 the said Board of Equalization and of the said Tax Commission, and the said tax collectors, taxing officers of the said State of Illnois who are now proposing and threatening to take the property of your orators without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States in manner and form as hereinafter set forth.

VI.

That after said arbitrary and fraudulent assessments were made by the said Board of Equalization and said Tax Commission aforesaid on each of said years the auditor of public accounts for the years 1917 to 1918 inclusive and the said Tax Commission for the years 1919 and 1920 distributed and certified the value of said railway in Illinois on a mileage basis to each of the counties aforesaid and the county clerk of each of said counties for each of said years distributed the value so assessed upon the railroad tax books of each of said counties in such manner that state, county, city, village, school district and all other municipal taxes and special assessments were extended upon the proportionate values of said railroad lying in each of the said taxing districts on the basis of the excessive valuations and assessments aforesaid, and your orators aver that the sums extended on said valuations were excessive as aforesaid and also included divers items of excessive taxes which were illegal and in excess of statutory and constitutional limitations of rates of taxation; that the amount of said taxes in each of said counties as distributed in each of said taxing districts, together with a statement of the excess tax charged and the balance admitted to be due upon the basis hereinafter stated after the deduction of all illegal taxes, also deducting the taxes on the excessive valuation so distributed as aforesaid are all shown in the schedules containing such information for each of said counties as follows:

Taxes, 1917.

Illinois Southern R. R. Co.

Perry County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$109.85	.....	$109.85	$21.97
County	County	91.54	.....	91.54	18.31
Non. H. School	"	10.99	.....	10.99	2.20
Road & Bridge	Dist. #44	74.45	.....	74.45	14.89
School	Dist. #58	68.07	.....	68.07	13.61
"	" # 1	57.07	.....	57.07	11.41
Total		411.97	.....	411.97	82.39

Taxes, 1918.

State	County	$91.74	.....	$91.74	$18.35
County	County	100.08	$8.34	91.74	18.35
Road & Bridge	Dist. #44	74.62	.....	74.62	14.92
Non. H. School		25.69	25.69	.....	.....
School	Dist. #58	76.25	.....	76.25	15.25
"	" # 1	55.66	55.66	.....	.....
Total		424.04	89.69	334.35	66.87

Illinois Southern R. R. Co.

Perry County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	67.36	.....	$67.36	$13.47
County	County	89.25	$5.05	84.20	16.84
Road & Bridge	Dist. #44	101.05	.....	101.05	20.21
Non. H. School		23.58	.....	23.58	4.72
School	Dist. #58	75.96	.....	75.96	15.19
"	" # 1	56.06	56.06	.....	.....
Total		413.26	61.11	362.15	70.43

Taxes, 1920.

State	County	$48.08	.....	$48.08	$16.03
County	"	63.62	$3.60	60.02	20.00
Non. H. School		48.08	48.08	.....	.....
Road & Bridge	Dist. #44	79.33	.....	79.33	26.44
School	Dist. #58	89.71	.....	89.71	29.91
"	" # 1	39.78	39.78	.....	.....
Total		368.60	91.46	277.14	92.38

Illinois Southern R. R. Co.

Marion County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$828.83	.....	$828.83	$165.77
County	"	690.71	$138.14	552.57	110.52
Town	Salem	128.38	64.19	64.19	12.84
"	Odin	20.91	.....	20.91	4.18
"	Sandoval	25.36	5.32	20.04	4.01
"	Centralia	15.59	.....	15.59	3.12
Road & Bridge	Salem	291.00	29.95	261.05	52.21
" "	Odin	167.28	.....	167.28	33.46
" "	Sandoval	108.90	17.90	91.00	18.20
" "	Centralia	74.65	6.68	67.97	13.59
City & Vil	Salem	231.37	.....	231.37	46.27
" "	Centralia	48.47	.....	48.47	9.69
" "	"	190.50	.....	190.50	38.10
" "	Central City	11.97	.....	11.97	2.59
School	Dist. 113	123.06	.....	123.06	24.61
"	" 112	42.52	.....	42.52	8.50
"	" 111	358.11	.....	358.11	71.62
"	" 111	278.76	.....	278.76	55.75
"	" 128	157.50	.....	157.50	31.50

Taxes, Marion County, 1917.—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School.....	Dist. 129.....	57.27	.....	57.27	11.45
"	" 129.....	65.40	.....	65.40	13.08
"	" 120.....	87.43	.....	87.43	17.49
"	" 133.....	50.35	.....	50.35	10.07
"	" 135.....	53.73	.....	53.73	10.75
"	" 135.....	211.18	.....	211.18	42.24
Tp. H. School.....	Centralia.....	161.55	.....	161.55	32.31
Non H. School.....	Salem.....	47.44			
" " "	Odin.....	51.12	131.38	.....	.....
" " "	Sandoval.....	32.82			
Total		4,612.16	393.56	4,218.60	843.72

Illinois Southern R. R. Co.

Marion County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$691.84	.....	$691.84	$138.37
County	"	691.84	$691.84	.....	.....
Town	Salem	68.51	49.33	19.18	3.84
"	Odin	27.91	6.98	20.93	4.19
"	Sandoval	25.42	6.35	19.07	3.81
"	Centralia	10.10	.....	10.10	2.02
Road & Bridge	Salem	269.75	8.56	261.19	52.24
" " "	Odin	165.09	.....	165.09	33.02
" " "	Sandoval	91.20	.....	91.20	18.24
" " "	Centralia	85.31	16.84	68.47	13.69
City & Vil	Salem	186.11	.....	186.11	37.22
" "	Centralia	22.78	22.78	.....	.....
" "	Centralia	197.74	.....	197.74	39.55
" "	Central City	12.10	.....	12.10	2.42
School	Dist. #113	124.69	.....	124.69	24.94
"	" 112	46.14	.....	46.14	9.23
"	" 111	358.89	.....	358.89	71.78
"	" 111	277.77	.....	277.77	55.55
"	" 128	173.63	.....	176.63	34.73

Taxes, Marion County, 1918.—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance	Amount admitted to be true and tendered.
School	Dist. #129	148.43	.....	148.43	29.69
"	" 129	169.50	.....	169.50	33.90
"	" 120	73.00	73.00	.....	.....
"	" 133	51.25	.....	51.25	10.25
"	" 135	52.96	.....	52.96	10.59
"	" 135	207.27	.....	207.27	41.45
Non H. School	Salem	54.23			
" " "	Odin	55.81	145.92	.....	.....
" " "	Sandoval	35.88			
Tp. H. School	Centralia	154.90	.....	154.90	30.98
Total		4,530.00	1,021.60	3,508.45	701.69

Illinois Southern R. R. Co.

Marion County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$499.49	.....	$499.49	$99.90
County	"	1,006.42	$89.90	946.52	189.30
Town	Salem	88.86	17.77	71.09	14.22
"	Odin	25.67	.....	25.67	5.14
"	Sandoval	22.58	.....	22.58	4.52
"	Centralia	.....	.....	.....	.....
Road & Bridge	Salem	296.20	.....	296.20	59.24
" " "	Odin	240.61	.....	240.61	48.12
" " "	Sandoval	123.15	.....	123.15	24.63
" " "	Centralia	101.59	15.63	85.96	17.19
City	Salem	252.87	.....	252.87	50.57
"	Centralia	227.80	.....	227.80	45.56
School	Dist. #111	359.26	59.28	592.78	118.56
"	" 111	292.80			
"	" 112	45.65	.....	45.65	9.13
"	" 113	25.86	.....	25.86	5.17
"	" 128	79.44	.....	79.44	15.89
"	" 129	170.08	.....	170.08	34.02
"	" 129	194.46	.....	194.46	38.89

Taxes, Marion County, 1919—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. #120	66.07	.....	66.07	13.21
"	" 133	30.75	.....	30.75	6.15
"	" 135	376.65	75.93	300.72	60.14
Tp. H. School	Centralia	184.94	.....	184.94	36.99
Non H. School	Salem	65.12	.....	65.12	13.02
" " "	Odin	70.58	.....	70.58	14.12
" " "	Sandoval	45.16	.....	45.16	9.03
Total		4,922.06	258.51	4,663.55	932.71

Illinois Southern R. R. Co.

Marion County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$330.60	.....	$330.63	$110.20
County	"	661.20	$37.19	624.01	208.00
Town	Salem	75.79	15.16	60.63	20.21
"	Odin	22.54	.....	22.54	7.51
"	Sandoval	19.05	.....	19.05	6.35
"	Centralia	5.57	.....	5.57	1.86
Road & Bridge	Salem	263.27	.....	263.27	87.76
" " "	Odin	148.76	.....	148.76	49.59
" " "	Sandoval	96.64	.....	96.64	32.21
" " "	Centralia	32.35	.....	32.35	10.78
City	Salem	156.00	.....	156.00	52.00
"	Centralia	118.81	.....	118.81	39.60
School	Dist. 111	269.14	.....	269.14	89.71
"	" 111	186.72	.....	186.72	62.24
"	" 112	32.75	.....	32.75	10.92
"	" 113	71.28	.....	71.28	23.75
"	" 128	136.92	.....	136.92	45.64
"	" 129	145.35	.....	145.35	48.45
"	" 129	169.80	.....	169.80	56.60

Taxes, Marion County, 1920—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. 120	32.60	.....	32.60	10.87
"	" 135	148.37	148.37	.....	.....
Tp. H. School	Centralia	108.21	.....	108.21	36.07
Non H. School	Salem	54.42			
" " "	Odin	80.86	154.81	.....	.....
" " "	Sandoval	39.53			
Total		3,386.51	355.53	3,030.98	1,010.33

Taxes, 1917.

Illinois Southern R. R. Co.

Clinton County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$129.45	.....	$129.45	$25.89
County	County	107.87	$21.57	88.30	17.26
Town	Brookside	27.33	.....	27.33	5.47
Road & Bridge	"	87.74	.....	87.74	17.55
Non H. School	"	14.38	.....	14.38	2.87
School	Dist. #46	340.88	.....	340.88	68.18
Total		707.65	21.57	686.08	137.22

Taxes, 1918.

State	County	108.10	.....	108.10	21.62
County	County	108.10	21.62	86.48	17.30
Town	Brookside	33.15	.....	33.15	6.63
Road & Bridge	"	87.93	.....	87.93	17.59
Non H. School		12.97	.....	12.97	2.59
School	Dist. #46	269.54	.....	269.54	53.91
Total		619.79	21.62	598.17	119.64

Taxes, 1919.

Illinois Southern R. R. Co.

Clinton County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$78.89	.....	78.89	$15.78
County	County	104.53	$5.91	98.62	19.72
Town	Brookside	33.53	.....	33.53	6.71
Road & Bridge	"	130.17	.....	130.17	26.03
Non H. School		21.70	.....	21.70	4.34
School	Dist. #46	264.29	1.31	262.98	52.60
Total		633.11	7.22	625.89	125.18

Taxes, 1920.

State	County	$55.56	.....	$55.56	$18.52
County	County	69.45	.....	69.45	23.15
Town	Brookside	29.17	$3.79	25.38	8.46
Road & Bridge	"	91.68	.....	91.68	30.56
Non H. School		29.17	.....	29.17	9.72
School	Dist. #46	225.03	39.82	185.21	61.74
Total		500.06	43.61	456.45	152.15

Taxes, 1917.

Illinois Southern R. R. Co.

Washington County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$1,818.00	.....	$1,818.00	$363.60
County	"	1,515.00	$454.50	1,060.50	212.10
Road & Bridge	Irvington	275.11	275.11	.....	.....
" "	Hoyleton	329.09	329.09	.....	.....
" "	Beaucoup	149.76	149.76	.....	.....
" "	Nashville	359.62	359.62	.....	.....
" "	Pilot Knob	126.13	126.13	.....	.....
" "	Oakdale	275.88	275.88	.....	.....
Town	Irvington	37.69	37.69	.....	.....
"	Beaucoup	38.83	38.83	.....	.....
"	Nashville	39.96	.....	39.96	7.99
"	Pilot Knob	9.34	9.34	.....	.....
"	Oakdale	36.18	.....	36.18	7.23
Non H. School		180.21	.....	180.21	36.04
Hard Road	Hoyleton	77.20	77.20	.....	.....
Tp. Bond	Pilot Knob	87.20	87.20	.....	.....
" "	Oakdale	104.02	104.02	.....	.....
Village	Hoyleton	29.11	29.11	.....	.....
City	Nashville	84.11	13.20	70.91	14.18

Taxes, Washington County, 1917—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
City Bond	Nashville	26.63	.....	26.63	5.33
School	Dist. # 1	119.58	.....	119.58	23.92
"	" 2	204.96	204.96	.....	.....
"	" 12	43.52	43.52	.....	.....
"	" 29	16.34	.....	16.34	3.27
"	" 31	93.25	.....	93.25	18.65
"	" 32	43.18	.....	43.18	8.64
"	" 35	70.26	.....	70.26	14.05
"	" 49	385.77	.....	385.77	77.15
"	" 50	29.13	.....	29.13	5.83
"	" 53	115.04	.....	115.04	23.01
"	" 54	4.76	.....	4.76	.95
"	" 56	119.90	.....	110.90	23.98
"	" 70	220.73	.....	220.73	44.15
"	" 72	203.05	.....	203.05	40.61
"	" 73	53.33	.....	53.33	10.66
Total		7,321.86	2,615.16	4,706.70	941.34

Illinois Southern R. R. Co.

Washington County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$1,518.08	.....	$1,518.08	$303.62
County	"	1,518.08	$455.42	1,062.66	212.53
Road & Bridge	Irvington	305.90	305.90	.....	.....
" "	Hoyleton	329.77	329.77	.....	.....
" "	Beaucoup	150.09	150.09	.....	.....
" "	Nashville	240.19	240.19	.....	.....
" "	Pilot Knob	126.38	126.38	.....	.....
" "	Oakdale	276.44	276.44	.....	.....
Town	Irvington	52.87	52.87	.....	.....
"	Hoyleton	57.00	57.00	.....	.....
"	Beaucoup	37.06	37.06	.....	.....
"	Nashville	31.14	.....	31.14	6.23
"	Pilot Knob	10.92	.....	10.92	2.18
"	Oakdale	40.79	.....	40.79	8.16
Non H. School		297.37	44.56	252.81	50.56
Town Bond	Oakdale	72.51	72.51	.....	.....
Hard Road	Hoyleton	73.28	73.28	.....	.....
Village	Hoyleton	29.11	29.11	.....	.....
City	Nashville	84.11	13.20	70.91	14.18

Taxes, Washington County, 1918—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
City Bond	Nashville	27.34	.....	27.34	5.47
School	Dist. # 1	137.80	.....	137.80	27.56
"	" 2	223.32	.....	223.32	44.66
"	" 12	55.00	.....	55.00	11.00
"	" 29	16.37	.....	16.37	3.27
"	" 31	95.17	.....	95.17	19.03
"	" 32	46.52	.....	46.52	9.31
"	" 35	74.12	.....	74.12	14.82
"	" 49	371.08	.....	371.08	74.22
"	" 50	32.53	.....	32.53	6.51
"	" 53	124.17	.....	124.17	24.84
"	" 54	4.32	.....	4.32	.86
"	" 56	78.02	.....	78.02	15.60
"	" 70	169.57	.....	169.57	33.91
"	" 72	259.23	.....	259.23	51.85
"	" 73	64.98	.....	64.98	13.00
Total		7,030.63	2,263.78	4,766.85	953.37

Illinois Southern R. R. Co.

Washington County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$1,111.68	.....	$1,111.68	$222.34
County	"	1,389.62	$437.73	951.89	190.38
Road & Bridge	Irvington	342.56	342.56	.....	.....
" "	Hoyleton	402.89	402.89	.....	.....
" "	Beaucoup	219.38	219.38	.....	.....
" "	Nashville	401.19	401.19	.....	.....
" "	Pilot Knob	165.41	165.41	.....	.....
" "	Oakdale	411.05	411.05	.....	.....
Town	Irvington	51.90	51.90	.....	.....
"	Hoyleton	83.94	83.94	.....	.....
"	Beaucoup	33.16	33.16	.....	.....
"	Nashville	42.55	.....	42.55	8.51
"	Pilot Knob	17.19	17.19	.....	.....
"	Oakdale	37.37	.....	37.37	7.47
Hard Road	Hoyleton	33.57	33.57	.....	.....
Town Bond	Oakdale	99.64	99.64	.....	.....
Non H. School		248.32	.....	248.32	49.66
Village	Hoyleton	114.99	114.99	.....	.....
City	Nashville	125.83	125.83	.....	.....

Taxes, Washington County, 1919—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. # 1	135.27	.....	135.27	27.05
"	" 2	268.24	.....	268.24	53.65
"	" 12	82.24	.....	82.24	16.45
"	" 29	43.18	.....	43.18	8.64
"	" 31	83.27	.....	83.27	16.65
"	" 32	49.15	.....	49.15	9.83
"	" 35	89.28	.....	89.28	17.86
"	" 49	441.07	.....	441.07	88.21
"	" 50	32.15	.....	32.15	6.43
"	" 53	105.00	.....	105.00	21.00
"	" 54	2.87	.....	2.87	.57
"	" 65	79.48	.....	79.48	15.90
"	" 70	139.22	139.22	.....	.....
"	" 72	182.60	.....	182.60	36.52
"	" 73	77.90	.....	77.90	15.58
Total		7,143.16	3,079.65	4,063.51	812.70

Illinois Southern R. R. Co.

Washington County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$774.87	.....	$774.87	$258.29
County	"	852.36	$320.48	531.88	177.29
Road & Bridge	Irvington	242.87	242.87	.....	.....
" "	Hoyleton	307.67	307.67	.....	.....
" "	Beaucoup	143.76	143.76	.....	.....
" "	Nashville	272.07	272.07	.....	.....
" "	Pilot Knob	105.21	105.21	.....	.....
" "	Oakdale	287.26	287.26	.....	.....
Town	Irvington	33.12	33.12	.....	.....
"	Hoyleton	35.05	35.05	.....	.....
"	Beaucoup	27.30	27.30	.....	.....
"	Nashville	37.10	.....	37.10	12.37
"	Pilot Knob	19.54	19.54	.....	.....
"	Oakdale	34.82	.....	34.82	11.61
Non H. School		192.22	.....	192.22	64.07
Hard Road	Hoyleton	23.37	23.37	.....	.....
Village	Hoyleton	69.57	69.57	.....	.....
City	Nashville	67.91	67.91	.....	.....
School	Dist. # 1	144.76	.....	144.76	48.25

Taxes, Washington County, 1920—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. # 2	235.76	.....	235.76	78.59
"	" 12	73.56	.....	73.56	24.52
"	" 29	29.08	29.08	.....	.....
"	" 31	63.41	.....	63.41	21.14
"	" 32	46.75	.....	46.75	15.58
"	" 35	80.07	.....	80.07	26.69
"	" 49	297.92	.....	297.92	99.31
"	" 50	24.57	.....	24.57	8.19
"	" 53	114.97	.....	114.97	38.32
"	" 54	4.24	.....	4.24	1.41
"	" 56	87.17	.....	87.17	29.06
"	" 70	147.10	.....	147.10	49.03
"	" 72	161.29	.....	161.29	53.76
"	" 73	75.13	75.13	.....	.....
Total		5,111.85	2,059.39	3,052.46	1,017.48

Illinois Southern R. R. Co.

Randolph County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$3,249.14	.....	$3,249.14	$649.83
County	"	2,527.11	$219.85	2,307.26	461.45
Road & Bridge	Dist. # 1	380.48	58.13	322.35	64.47
" "	" 2	162.18	44.66	117.52	23.50
" "	" 6	409.90	.....	409.90	81.98
" "	" 9	524.50	39.73	484.77	96.96
" "	" 10	534.22	.....	534.22	106.85
" "	" 12	408.40	100.84	307.56	61.51
City & Vil	Coulterville	100.12	.....	100.12	20.03
" "	Sparta	267.25	5.31	261.94	52.39
" "	Evansville	44.76	.....	44.76	8.95
" "	Chester	68.75	.....	68.75	13.75
Non H. School		392.82	.....	392.82	78.56
Tp. H. School	Sparta	1,724.22	.....	1,724.22	344.85
School	Dist. # 1	527.51	.....	527.51	105.50
"	" 2	5.66	.....	5.66	1.13
"	" 4	99.30	.....	99.30	19.86
"	" 5	161.77	.....	161.77	32.35
"	" 6	70.22	.....	70.22	14.05

Taxes, Randolph County, 1917—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. # 9	73.48	.....	73.48	14.70
"	" 14	1,124.41	.....	1,124.41	224.88
"	" 35	143.36	.....	143.36	28.67
"	" 36	127.66	.....	127.66	25.53
"	" 64	233.02	.....	233.02	46.61
"	" 65	75.77	75.77	.....	.....
"	" 66	121.77	.....	121.77	24.35
"	" 85	333.66	.....	333.66	66.73
"	" 88	230.41	.....	230.41	46.08
"	" 89	155.48	.....	155.48	31.10
"	" 90	352.92	.....	352.92	70.58
"	" 100	276.89	.....	276.89	55.38
"	" 77	393.81	.....	393.81	78.76
"	" 78	63.92	.....	63.92	12.78
Total		15,364.88	544.29	14,820.59	2,964.12

Illinois Southern R. R. Co.

Randolph County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$2,712.51	.....	$2,712.51	$542.50
County	"	2,531.67	$240.50	2,291.17	458.24
Rd. & Bridge	Dist. # 1	324.22	.....	324.22	64.84
" " "	" 2	143.45	25.87	117.58	23.52
" " "	" 6	404.39	.....	404.39	80.88
" " "	" 9	408.30	.....	408.30	81.66
" " "	" 10	356.37	.....	356.37	71.27
" " "	" 12	323.23	15.15	308.08	61.62
" " "	" 19	233.94	.....	233.94	46.79
Non H. School		455.75	.....	455.75	91.15
Tp. H. School	Sparta	2,142.33	.....	2,142.33	428.47
School	Dist. # 1	514.10	514.10	.....	.....
"	" 2	5.61	.....	5.61	1.12
"	" 4	81.86	.....	81.86	16.37
"	" 5	163.60	163.60	.....	.....
"	" 6	69.46	.....	69.46	13.89
"	" 9	56.13	.....	56.13	11.23
"	" 14	1,272.05	.....	1,272.05	254.41
"	" 35	152.65	.....	152.65	30.53

Taxes, Randolph County, 1918—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. # 36	127.91	127.91	.....	.....
"	" 64	248.10	.....	248.10	49.62
"	" 65	49.70	49.70	.....	.....
"	" 66	138.73	.....	138.73	27.75
"	" 85	281.39	.....	281.39	56.28
"	" 88	295.01	.....	295.01	59.00
"	" 89	125.95	.....	125.95	25.19
"	" 90	424.22	.....	424.22	84.84
"	" 100	228.05	.....	228.05	45.61
"	" 77	461.07	.....	461.07	92.21
"	" 78	68.32	.....	68.32	13.66
City & Vil.	Coulterville	106.07	5.84	100.23	20.05
" " "	Sparta	297.66	17.71	279.95	55.99
" " "	Evansville	41.51	.....	41.51	8.30
" " "	Chester	71.98	4.32	67.66	13.53
Total		15,317.29	1,164.70	14,152.59	2,830.52

Illinois Southern R. R. Co.

Randolph County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$1,988.16	.....	$1,988.16	$397.63
County	"	2,485.20	$228.64	2,256.56	451.31
Road & Bridge	Dist. # 1	307.42	.....	307.42	61.49
" " "	" 2	114.91	.....	114.91	22.98
" " "	" 6	536.78	.....	536.78	107.36
" " "	" 9	392.26	.....	392.26	78.45
" " "	" 10	397.90	.....	397.90	79.58
" " "	" 12	657.80	359.27	298.53	59.71
" " "	" 19	336.80	.....	336.80	67.36
City and Vil	Coulterville	130.06	.....	130.06	26.01
" " "	Sparta	416.60	.....	416.60	83.32
" " "	Evansville	95.57	.....	95.57	19.11
" " "	Chester	92.78	13.41	79.37	15.37
Non H. School		593.12	.....	593.12	118.62
Tp. H. School	Sparta	2,376.99	.....	2,376.99	475.40
School	Dist. # 1	400.57	400.57	.....	.....
"	" 2	6.35	.....	6.35	1.27
"	" 4	93.90	.....	93.90	18.78
"	" 5	167.89	.....	167.89	33.58

Taxes, Randolph County, 1919—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. # 6	62.10	.....	62.10	12.42
"	" 9	62.77	.....	62.77	12.55
"	" 14	1,191.00	.....	1,191.00	238.20
"	" 35	181.24	.....	181.24	36.25
"	" 36	194.98	.....	194.98	39.00
"	" 64	229.32	.....	229.32	45.86
"	" 65	81.40	.....	81.40	16.28
"	" 66	134.22	.....	134.22	26.85
"	" 85	255.27	.....	255.27	51.05
"	" 88	292.44	292.44	.....	.....
"	" 89	154.72	.....	154.72	30.94
"	" 90	380.45	.....	380.45	76.09
"	" 100	198.25	.....	198.25	39.65
"	" 77	460.08	.....	460.08	92.02
"	" 78	68.59	.....	68.59	13.72
Total		15,537.89	1,294.33	14,243.46	2,848.71

Illinois Southern R. R. Co.

Randolph County.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
State	County	$1,330.04	.....	$1,330.04	$443.35
County	"	1,828.80	$428.94	1,399.86	446.62
Road & Bridge	Dist. # 1	267.08	.....	267.08	89.03
" " "	" 2	67.95	.....	67.95	22.65
" " "	" 6	386.02	.....	386.02	128.67
" " "	" 9	499.85	.....	499.85	166.62
" " "	" 10	365.35	.....	365.35	121.78
" " "	" 12	303.17	.....	303.17	101.06
" " "	" 19	252.10	.....	252.10	84.03
Non H. School		600.44	.....	600.44	200.15
Tp. H. School	Sparta	1,719.59	1,719.59	.....	.....
City & Vil	Coulterville	95.00	95.00	.....	.....
" " "	Sparta	250.42	22.33	228.09	76.03
" " "	Evansville	66.67	.....	56.67	18.89
" " "	Chester	60.37	8.78	51.59	17.20
School	Dist. # 1	337.47	337.47	.....	.....
"	" 2	5.58	.....	5.58	1.86
"	" 4	69.36	.....	69.36	23.12
"	" 5	131.45	.....	131.45	43.82

Taxes, Randolph County, 1920—Continued.

Kind of tax.	Taxing dist.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be true and tendered.
School	Dist. # 6	57.64	.....	57.64	19.21
"	" 9	31.90	.....	31.90	10.63
"	" 14	966.83	.....	966.83	322.28
"	" 35	153.46	.....	153.46	51.15
"	" 36	127.86	.....	127.86	42.62
"	" 64	187.89	.....	187.89	62.63
"	" 65	87.39	.....	87.39	29.13
"	" 66	110.78	110.78	.....	.....
"	" 85	130.63	.....	130.63	43.54
"	" 88	250.13	.....	250.13	83.38
"	" 89	104.28	.....	104.28	34.76
"	" 90	252.55	.....	252.53	84.18
"	" 100	245.87	.....	245.87	81.95
"	" 77	360.38	.....	360.38	120.13
"	" 78	71.30	.....	71.30	23.77
Total		11,765.60	2,722.89	9,042.71	3,014.24

31 VII.

That *on* each of said years the form of returning a delinquent tax list, the making up of the same into a tax judgment record, the publication of notice, the application for judgment, the form of judgment and the form of offering said property for sale for delinquent taxes and special assessments, together with interest penalties charged thereon was gone through with by the taxing officers of each of said counties which proceedings your orators aver in each instance failed of conformity with the provisions of the taxing laws of the State of Illinois and in each instance was illegal and void for the reasons following, to-wit:

(*a*) There was no return of any delinquent list containing a proper description of the properties of the said Railway Companies by the county collectors of said counties *on* any or either of said years of any of the taxes alleged to be delinquent.

(*b*) The notices of application for judgment for delinquent taxes were not given as required by law in that the same were not printed and published in any newspaper in said county or otherwise once in each week for at least three weeks prior to the term of county court at which judgment was to be applied for and did not contain a list of the delinquent lands and lots of the said Railway Companies upon which taxes and special assessments were alleged to remain due and unpaid and did not specify the owners of said property, nor the amounts due thereon, and the said collectors did not give notice by such publication of the term of court in which application would be made for such judgments, nor notice of the dates on which the same would be offered for sale, if not paid, nor specify the place where the same would be offered for sale if not paid, and said alleged notices did not contain proper and intelligible descriptions of the said property and did not purport to have been given by the respective county collectors of the said counties or any or either of them; that each and all of said alleged notices were so defective and insufficient and otherwise informal and defective as to render them
32 void.

(*c*) At the time alleged applications for judgments were made *on* each of the said years the printers, publishers or financial agents of said newspapers in which pretended notices of applications for judgments were alleged to have been printed and published did not attach their respective certificates to said notices or either of them certifying to the publication of the said lists or any or either of them for the time required by law and did not present the same to the collectors of taxes or either of them and the said collectors of taxes did not either of them present any such notices to the said county courts of their respective counties or either of them at the time any judgment was prayed against the property of the said railway companies, nor file as a part of the record of any such proceedings in any or either of said courts a copy of any of said notices and publication certificates as required by section 196 of an act for the assessment of property and the levy and collection of taxes, approved March 30,

1872, as since amended, nor was that done *on* any either of the said years in any or either of said counties.

(*d*) That the said collectors of taxes did not any of them in either of said years transcribe into a book prepared for that purpose and known as the tax judgment sale redemption and forfeiture record a list of the delinquent lands and lots containing information necessary to be recorded at least five days before the term of court at which said application for judgment was made and no such transcript was made in any book setting forth the name of the owner of the property of the said Railway Companies, and your Orators, the proper description of said property, the year or years for which the taxes or special assessments were due, the valuation on which the tax was extended, the amount of consolidated and other taxes and special assessments, the interest, penalties and costs and total charges against said property as required by the Revenue Statutes of the State of Illinois, but in said respects the said pretended records were
33 each of them for each of said years wholly defective and inadequate to inform the public of the true amount of taxes, special assessments, interest, penalties and costs due and unpaid upon the property of the said Railway Companies and your Orators for each of said years in each of the said counties; and contained divers items of illegal and excessive taxes, illegal and unjust penalties, excessive and undue interest, excessive charges and excessive penalties and each of said records was wholly informal, inaccurate and short of compliance with the provisions of the statutes of the State of Illinois in that behalf.

(*e*) That the said collectors of taxes did not in either of said years in any of said counties make and subscribe an oath verifying a list of delinquent lands and lots in any or either of said counties, and especially did not do so as to the lands, lots and railroad property of the said Railway Companies, and your orators, upon which he had been unable to collect taxes, special assessments, interest, penalties, printers' fees, and other costs and charges as required by law for any of said years respectively in any or either of the said counties and that the same remain due and unpaid as required by the provisions of section 190 of the Revenue Act of March 30, 1872, as amended.

(*f*) That the descriptions of the properties of your orators on the tax judgment sale redemption and forfeiture records of the said several counties for each of the said years were fatally defective, uncertain and insufficient whereby any alleged judgment thereon was absolutely incapable of being identified as being against the property of the said Railway Companies and your orators or any or either of them in that the same was in substance as follows:

"Illinois Southern Railway Company — Dollars forfeited."

(*g*) That in each of said years in each of said counties the clerks' precept certifying or pretending to certify to the judgment
34 and the certificate entered on the tax sale redemption and forfeiture record was not made and certified to on the day

the said collector had advertised for sale and was not entered upon said record in the manner and form prescribed by section 194 of the act entitled, "An Act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, as since amended and whatever precept or certificate was attempted to be made and certified by the said clerks in any or either of said counties in any or either of said years was so irregular in form and so defective and insufficient as to afford no authority to the county collector of taxes to proceed with the sale thereunder and any and all alleged sales thereunder were without jurisdiction and void.

(*h*) That in each of said years the pretended judgments rendered against the property of the said Railway Companies and your orators in each of said counties were informal, illegal and void for the reason that the same contained no placita or convening order of court and did not follow or pretend to follow the provisions of the statute of the State of Illinois in identifying the property against which alleged judgments were rendered nor the persons or corporations against whom judgments were attempted to be rendered and did not contain a proper, certain and adequate or sufficient description of the property of the said Railway Companies and your Orators, or any or either of them, or any certain or sufficient identification thereof as required by law.

(*i*) That in each of the said years in each of said counties the pretended judgments alleged to have been entered against the properties of the said Railway Companies and your orators in each of the said counties contains divers items of illegal, excessive and void taxes, special assessments, interest, penalties and costs as aforesaid whereby the said judgments and each of them were illegal and void and each of the said county courts was without jurisdiction to enter the same.

35 (*j*) That *on* each of said years for the reasons aforesaid and for other good and sufficient reasons appearing upon the face of the said tax records the said judgments and the penalties charged against the property of the said Railway Companies and your orators were illegal and void.

VIII.

That the proportion of taxes *a*llegally levied and assessed on the said property in each of the years 1917-1920 inclusive were levied and extended against the Illinois Southern Railway Company and became a lien on the property described as aforesaid; that by the purchase thereof at foreclosure sale and the conveyances aforesaid from the Illinois Southern Railway Company to the purchaser at said sale and thence to the Illinois and Missouri Railroad Company, the complainants, William T. Abbott, and the Missouri and Illinois Railroad Company, by contract became liable to pay such taxes as are legally due upon said property; that your orator, William W. Wheelock, as receiver, is still in office and exercising his trust as

such receiver and a large proportion of said taxes legally due became a lien upon said property while the same was being operated by him as receiver of the properties of the Illinois Southern Railway Company, and certain adjustments of his accounts may depend upon the amount of taxes legally due upon said property; that all of said back taxes have been carried forward from year to year and have been re-extended as such together with the current year's taxes against said property each successive year, including and since 1917, by the taxing officers of each of the said counties and the county collector of taxes in each of said counties reported, or will report the same as delinquent in the year 1921; that the said several defendants herein named are each by the laws of the State of Illinois charged with the duty of presenting to the county courts of their respective counties delinquent lists of all unpaid taxes on the first day of the terms of the county courts of their respective counties at which judgment may be prayed pursuant to section 190,
36 chapter 130 H. R. S., title, "Revenue" and each making an affidavit that such list is a corrected list of lands, lots and railroad property within their respective counties upon which he has been unable to collect taxes, special assessments, interest, penalties and costs, if any charged thereon, for the year or years therein set forth, and as to said property for the years 1917-1920; and that said taxes now remain due and unpaid as they each respectively verily believe; that all of the illegal taxes aforesaid have been extended as aforesaid and the unpaid taxes in excess of the amounts actually due as aforesaid have been or will be made up in such delinquent lists on the first Monday in June 1921, or soon thereafter and be certified by affidavits of said county collectors of their several counties as delinquent taxes, unless restrained, and they will each apply to the county courts of their respective counties for judgments against the lands, lots and railway property aforesaid in their several counties and judgment will be entered against the same, if not restrained by this Honorable Court; that in each of said counties there are a large number of taxing districts with treasurers charged with the duty of recovering taxes due their several districts from said county collectors of taxes in the aggregate, approximately ten to fifteen upon an average in each of said counties, that if such tax judgments shall be entered or if said illegal taxes should be paid and collected by said defendants, it will be the duty of the said county collectors of each of said counties having received the same to pay to the treasurers of each of said taxing districts and said treasurers, including the said treasurer of the State of Illinois, and the treasurers of each of said counties, the proportion or part of the taxes collected respectively for the said several counties of the State of Illinois and the said several taxing districts in each of said counties, and if suit could be maintained for a recovery thereof the said complainants or such of them as would be entitled to recover said taxes so illegally
37 exacted and collected would be required to bring separate suits against each of the said several taxing bodies to recover the proportionate share of said illegal taxes received by each such taxing district and no recovery could be had against the State of Illinois

because of its sovereignty, and if re-payment could be enforced from said several counties and said several taxing districts to who- said sums of money would be distributed by the said several defendants that could be accomplished only by a great multiplicity of suits and the cost of collecting the same in attorneys' fees and costs, commissions and other expenses would be so great as in effect to deprive your orators of any adequate remedy in the courts of law; your orators further aver that it has been determined and settled by the decisions of the Supreme Court of the State of Illinois that payments of taxes voluntarily made without availing of the legal remedies in the courts to prevent the collection thereof are voluntary payments and that there can be no recovery of same after such payments are made. Wherefore, these complainants aver that they are without adequate remedy save in a court of equity.

IX.

Your Orators further aver that they have had an expert tax accountant make a careful re-extension of th- taxes aforesaid upon the basis of a fair and legal assessment and valuation of said property for each of said years in each of said counties, excluding all excessive and illegal taxes and have in such manner estimated the amount of taxes legally due to each of the said defendants for each of said taxing districts and tendered the same to each of the said defendants for his respective county as shown by the schedule here following:

38 *Total Tax Extended Against the Illinois Southern R. R. Company in the State of Illinois.*

County.	Year.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be due and tendered.
Marion	1917	$4,612.16	$393.56	$4,218.60	$843.72
"	1918	4,530.05	1,021.60	3,508.45	701.69
"	1919	4,922.06	258.51	4,663.55	932.71
"	1920	3,386.51	355.53	3,030.98	1,010.33
Total		17,450.78	2,029.20	15,421.58	3,488.45
Clinton	1917	707.65	21.57	686.08	137.22
"	1918	619.79	21.62	598.17	119.64
"	1919	633.11	7.22	625.89	125.18
"	1920	500.06	43.61	456.45	152.15
Total		2,460.61	94.02	2,366.59	534.19
Washington	1917	7,321.86	2,615.16	4,706.70	941.34
"	1918	7,030.63	2,263.78	4,766.85	953.37
"	1919	7,143.16	3,079.65	4,063.51	812.70
"	1920	5,111.85	2,059.39	3,052.46	1,017.48
Total		26,607.50	10,017.98	16,589.52	3,724.89
Perry	1917	411.97	.....	411.97	82.39
"	1918	424.04	89.69	334.35	66.87

"	1919	413.26	61.11	352.15	70.43
"	1920	368.60	91.46	277.14	92.38
Total		1,617.87	242.26	1,375.61	312.07
Randolph	1917	15,364.88	544.29	14,820.59	2,964.12
"	1918	15,317.29	1,164.70	14,152.59	2,830.52
"	1919	15,537.89	1,294.33	14,243.56	2,848.71
"	1920	11,765.60	2,722.89	9,042.71	3,014.24
Total		57,985.66	5,726.21	52,259.45	11,657.59

Recapitulation.

Marion	17,450.78	2,029.20	15,421.58	3,488.45
Clinton	2,460.61	94.02	2,366.59	534.19
Washington	26,607.50	10,017.98	16,589.52	3,724.89
Perry	1,617.87	242.26	1,375.61	312.07
Randolph	57,985.66	5,726.21	52,259.45	11,657.59
Grand Total	106,122.42	18,109.67	88,012.75	19,717.19

39 That the several sums tendered have been accepted and no legal taxes now remain due and unpaid to any or either of the said defendants. Nevertheless the said defendants and each of them threaten to prosecute their several applications for judgments against the said property for the remaining illegal, unconstitutional and void taxes aforesaid, and as aforesaid and to obtain and enforce judgment against the said railroad properties and indirectly against these complainants thereby taking their property and the property of the railway companies without due process of law and denying to them the equal protection of the law in violation of the Fourteenth Amendment to the Federal Constitution by means and force of the proceedings aforesaid and by force of the said unconstitutional, discriminatory and fraudulent assessments and illegal levies and extensions of taxes aforesaid.

Your orators further aver that in the proceedings aforesaid and in the manner and form aforesaid the State of Illinois by and through the action of its State Board of Equalization, State Tax Commission and other taxing officers as aforesaid, is threatening to and will, unless said taxing officers are restrained by this Honorable Court, deny to your orators the equal protection of the constitution and laws and take from them their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and in violation of the provisions of the Constitution of the State of Illinois requiring that every person and corporation shall pay a property tax in proportion to the value of his, her or its property as aforesaid.

Forasmuch, therefore, as the complainants are without remedy in the premises save in a court of equity and to the end that the said defendants and each of them may be enjoined and restrained from collecting said illegal taxes, and that a writ of injunction may issue from this Honorable Court directed to the said defendants, W. Fish Wilson, County Collector taxes of the County of Marion, Richard Farrell, County Collector of taxes of the County of
40 Clinton, H. W. Finke, County Collector of Taxes of the county of Washington, James H. Thimming, County Collector of taxes of the County of Perry and James H. McGuire, county Collector of taxes of the County of Randolph in the State of Illinois, commanding them and each of them and their deputies, agents, clerks, servants, assistants and attorneys to refrain and desist on the first day of the term of the county court in each of their several counties at which judgment for taxes on delinquent lands and lots may be prayed from reporting to the county clerks and clerks of the county courts of each of their several counties any lands and lots or railroad property belonging to the complainants or either of them which was and is all or a part of the properties aforesaid lately owned or controlled by the said complainants or either of them and assessed to and taxed in the name of the Illinois Southern Railway Company however described or known and from including in any delinquent tax list for the year 1920 in any or either of said counties on the first day of May 1921 or at any other time, or asking or praying the county court in either of said counties to

render judgment against the said railroad property, lands and lots or any of the complainants, or any or either of them for delinquent taxes for the years 1917 to 1920 inclusive, and that upon a hearing hereof the court shall take full account and make findings of the value of the property aforesaid *on* each of the years 1917 to 1920 inclusive for the purpose of taxation and determine the taxes, equitably due to the said several taxing districts upon a lawful assessment of said property and upon determination thereof order and decree the full satisfaction of any tax remaining due and unpaid and upon the payment thereof perpetually enjoin and restrain the said defendants and their successors in office from collecting said unlawful taxes, interests, penalties and costs found to be in excess of that legally due to each of the said defendants upon such accounting.

May it please this honorable court to grant the people's
41 writ of injunction so restraining and enjoining the said defendants and each of them, and may such injunction issue immediately as preliminary to this proceeding and be made permanent and perpetual upon a hearing hereof; and may the court issue its subpœna in chancery directed to the said defendants commanding them at a certain time and under a certain penalty therein specified to be and appear before this Honorable Court then and there to answer the allegations of this bill and to abide the order and decree of this Honorable Court, and may these complainants have such other and further relief in the premises as to this Honorable Court shall seem meet and as equity may require.

(Signed) ILLINOIS SOUTHERN RAILWAY CO.,
(Signed) WILLIAM W. WHEELOCK,
As Receiver of the Property of the Illinois Southern Railway Company;

(Signed) WILLIAM T. ABBOTT,
Trustee of the Bondholders of the Illinois Southern Railway Company;

(Signed) MISSOURI & ILLINOIS RAILROAD COMPANY,
Complainants.

(Signed) GEO. B. & GEO. M. GILLESPIE,
Solicitors for Complainants.

STATE OF ILLINOIS,
County of Sangamon, ss:

J. N. Wheatley being duly sworn on oath says that he has read the foregoing bill of complaint; that the facts therein stated are true in substance and in fact.

J. N. WHEATLEY.

Subscribed and sworn to before me this 1st day of June 1921.
[SEAL.] GEO. M. GILLESPIE,
Notary Public.

42 Endorsed: 1641. United States of America. In the United States District Court. Illinois Southern Railway Company et al., v. W. Fish Wilson, County Collector of Taxes of the County of Marion, etc. Bill in Chancery. Filed June 3, 1921. Arthur W. Charles, Clerk.

43 And on the same day, to-wit the 3rd day of June, A. D. 1921, there was filed in the office of the Clerk of said Court, in said cause, two notices of Application for a Temporary Restraining Order which said notices were and are in the words and figures following, to-wit:

44 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

v.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

To the above-named defendants:

You and each of you are hereby notified that the complainants in the above entitled cause will at the hour of nine o'clock A. M. Friday, June 3, 1921, at the chambers of the United States District Court for the Eastern District of Illinois, in the Federal Building, at East St. Louis, Illinois, present the bill in the above entitled cause and make application to the Judge of said Court for a preliminary injunction order, temporarily restraining you and each of you from reporting to the County Clerk of your respective counties, any delinquent list of lands, lots and railroad property assessed and taxed in your respective counties against the Illinois Southern Railway Company for the years 1917 to 1920 inclusive, on or after the first Monday in June, 1921, and from making application to the County Court of any or either of your counties on said date and at said time for judgment against said property for delinquent taxes on lands, lots, and railroad property so assessed and taxed for said years or either of said years, when and where you may appear and resist said application if you see fit so to do.

45 You and each of you are further notified that upon the granting of said injunction you will be notified thereof by telegraph and if you or either of you do any act or thing in violation of said injunction you will severally be subject to the penalties of contempt of said injunction order.

GEO. B. & GEO. M. GILLESPIE,
Attorneys for the Above-named Complainants.

46 John N. Wheatley, being duly sworn on oath, says that on the days and at the time indicated below, he duly served the above notice on each of the above named defendants by delivering to each of them a copy thereof.

W. Fish Wilson, County Collector of Taxes, Salem, Illinois served by delivering a copy this 2nd day of June, 1921.

Richard Farrell, County Collector of Taxes, Carlyle, Illinois, served by delivering a copy this 2nd day of June, 1921.

H. W. Finke, County Collector of Taxes, Nashville, Illinois, served by delivering a copy this 2nd day of June, 1921.

JOHN N. WHEATLEY.

Subscribed and sworn to before me, this 3d day of June, 1921.

[SEAL.] J. J. HARRELL,
Deputy Clerk.

Endorsed: In the United States District Court, Eastern District of Illinois. Illinois Southern Railway Company, William W. Wheelock, as Receiver of the Property of the Illinois Southern Railway Company, William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company, Complainants, v. W. Fish Wilson, County Collector of Taxes of the County of Marion, Richard Farrell, County Collector of Taxes of the County of Clinton, H. W. Finke, County Collector of Taxes of the County of Washington, James H. Thimming, County Collector of Taxes of the County of Perry and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants. Filed June 3, 1921. Arthur W. Charles, Clerk.

47 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

v.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

To the above-named defendants:

You and each of you are hereby notified that the complainants in the above entitled cause will at the hour of nine o'clock A. M. Friday, June 3, 1921, at the Chambers of the United States District Court for the Eastern District of Illinois, in the Federal Building, at East St. Louis, Illinois, present the bill in the above entitled cause and make application to the Judge of said Court for a preliminary injunction order temporarily restraining you and each of you from reporting to the County Clerk of your respective counties, any delinquent list of lands, lots and railroad property assessed and taxed in your respective counties against the Illinois Southern Rail-

48 way Company for the years 1917 to 1920 inclusive, on or after the first Monday in June, 1921; and from making application to the County Court of any or either of your counties on said date and at said time for judgment against said property for delinquent taxes on lands, lots and railroad property so assessed and taxed for said years or either of said years, when and where you may appear and resist said application, if you see fit so to do.

You and each of you are further notified that upon the granting of said injunction you will be notified thereof by telegraph and if you or either of you do any act or thing in violation of said injunction, you will severally be subject to the penalties of contempt of said injunction order.

GEO. B. & GEO. M. GILLESPIE,
Attorneys for the Above-named Complainants.

49 A. H. Banes, being duly sworn on oath, says that on the days and at the time indicated below, he duly served the above notice on each of the above named defendants by delivering to each of them a copy thereof.

James H. Thimming, County Collector of Taxes Pinckneyville, Illinois, served by delivering a copy this 2 day of June, 1921.

James H. McGuire, County Collector of Taxes Chester, Illinois, served by delivering a copy this 2 day of June, 1921.

——— ———.

Subscribed and sworn to before me, this 3 day of June, 1921.

[SEAL.] J. J. HARRELL,
Deputy Clerk.

Endorsed: 1641. United States of America, in the United States District Court, Eastern District of Illinois. Illinois Southern Railway Company, et al., Complainants, v. W. Fish Wilson, County Collector of Taxes of the County of Marion, etc. Notice. Filed June 3, 1921. Arthur W. Charles, Clerk.

50 And on the same day to-wit, the 3rd day of June, A. D. 1921, the following proceedings were had in said Court in said cause, and entered of record, to-wit:

51 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois, Friday, June 3, 1922.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

v.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Preliminary Restraining Order.

Be it remembered, that on this day, being the 3rd day of June, 1921, came the complainants in the above entitled cause before me at the chambers of the United States District Court for the Eastern District of Illinois, in the Federal Building, City of East St. Louis,

State of Illinois, and presented to me their bill in chancery in the above entitled cause and moved the Court to grant a preliminary restraining order in said cause, and upon hearing, it appearing to the court that the defendants herein have reasonable notice of said application, upon consideration of the bill in said cause together with the proofs submitted, the Court finds that a preliminary restraining order should be granted, and

It is hereby ordered That a preliminary restraining order issue and be in force in accordance with the prayer of said bill, commanding the said defendants and each of them, their deputies, agents, clerks, servants, assistants and attorneys, to refrain and absolutely desist, on the first day or any term of the County Court of their several and respective counties at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes for the years 1917 to
52 1920 inclusive, from reporting to the County Clerks and Clerks of the County Courts of their several counties, any lands, lots or railroad properties belonging or assessed to or taxed in the name of the Illinois Southern Railway Company or the Missouri and Illinois Railroad Company for any delinquent taxes, special assessments, interest, penalties or costs for any or either of the years 1917 to 1920, inclusive, or from applying to or praying any judgment against the Illinois Southern Railway Company or the Missouri and Illinois Railroad Company or the property of either of them as aforesaid, for any delinquent taxes for the years 1917 to 1920, inclusive.

It is further o-dered, that this order be temporarily in force from this date for a period of ten days from this date without bond.

It is further ordered That the Clerk of this *Clerk* immediately give notice to each of the defendants at their several places of residence, by telegraph, of the granting of this injunction and the Court finds that the residences of the said defendants respectively, are as follows:

W. Fish Wilson, County Collector of Taxes, Salem, Ill.,
Richard Farrell, County Collector of Taxes, Carlyle, Ill.,
W. H. Finke, County Collector of Taxes, Nashville, Ill.,
James H. Thimming, County Collector of Taxes, Pinckneyville, Ill.,
James H. McGuire, County Collector of Taxes, Chester, Ill.,

which is accordingly done this 3rd day of June, 1921.

GEORGE W. ENGLISH,
Judge of the United States District Court
for the Eastern District of Illinois.

53 And afterwards to-wit, on the 8th day of June, A. D. 1921, there was filed in the office of the Clerk of said Court, in said cause, Temporary Restraining Order, which said Temporary Restraining Writ, together with the Marshal's return thereon, was and is in the words and figures following, to-wit:

54 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

The President of the United States of America to W. Fish Wilson, County Collector of Taxes of the County of Marion; Richard Ferrel, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, State of Illinois:

By virtue of an Order this day entered by the United States District Court, for the Eastern District of Illinois and by the Honorable George W. English, Presiding Judge sitting therein:

You and each of you are commanded to desist, and your deputies, agents, clerks, servants, assistants and attorneys are absolutely commanded to desist and refrain from, on the first day of any term of the County Court of your several counties respectively, at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes for the years 1917 to 1920 inclusvie from reporting to the County Clerk and Clerks of the County Courts of your several counties any lands, lots or railroad properties belonging or assessed to or taxed in the name of the Illinois Southern Railway Company or the Missouri and Illinois Railroad Company for delinquent taxes, special assessments, interests, penalties or costs for any or either of the years 1917 to 1920 inclusive and from applying to or praying judgment of said Court against the Illinois Southern Railway Company or the Missouri and Illinois Railroad Company or the property of either of them for any delinquent taxes for the years 1917 to 1920 inclusive and this you will, each of you, keep and observe until there shall be a hearing on application for a Preliminary Injunction. It was further ordered by the Court that said cause be set for hearing on Motion for Preliminary Injunction on Friday, June 10th, A. D. 1921, at the hour of 9:00 o'clock A. M. in the Court Room of the United States District Court at East St. Louis, Illinois.

Witness the Honorable George W. English, Judge of said Court, and the Seal thereof, at East St. Louis, in said District, this 3rd day of June, A. D. 1921.

[SEAL.] ARTHUR W. CHARLES,
Clerk.

55 [Endorsed:] Marshal's Docket No. 2228. No. 1641. United States District Court Eastern District of Illinois. Illinois Southern Railway Company et al. vs. W. Fish Wilson, County Collector of Marion County, et al. Temporary Restraining Writ. Filed June 8, 1921. Arthur W. Charles, Clerk. (3-184.)

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I have duly served the within writ upon the within named James H. McGuire, County Collector of Taxes of the County of Randolph, State of Illinois, by reading and delivering a true copy of same to him at Chester, Illinois, the 4th day of June, A. D. 1921, and upon the within named James H. Thimmig, County Collector of Taxes of the County of Perry, State of Illinois, by reading and delivering a true copy of same to him at Pinckneyville, Illinois, the 5th day of June, A. D. 1921.

COOPER STOUT,
United States Marshal,
By J. F. SEMITH,
Deputy.

Marshal's Fees $14.57.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I have duly served the within writ upon the within named W. Fish Wilson, County Collector of Taxes of the County of Marion, State of Illinois, by reading and delivering a true copy of same to him at Salem, Illinois, the 4th day of June, A. D. 1921, and upon the within named Richard Farrell, County Collector of Taxes of the County of Clinton, State of Illinois, by reading and delivering a true copy of same to him at Carlyle, Illinois, the 4th day of June, A. D. 1921.

COOPER STOUT,
United States Marshal,
By P. D. PARKER,
Deputy.

Marshal's Fees $11.90.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I have duly served the within writ upon the within named H. W. Finke, County Collector of Taxes of the County of Washington, State of Illinois, by reading and delivering a true copy of same to him at Nashville, Illinois, the 4th day of June, A. D. 1921.

COOPER STOUT,
United States Marshal,
By NELL M. SHEDD,
Deputy.

Marshal's Fees $6.54.

56 And on the same day to-wit, the 8th day of June, A. D. 1921, there was filed in the office of the Clerk of said Court, in said cause, Chancery Supœna, which said Chancery Subpœna, together with the Marshal's return thereon, was and is of the words and figures following, to-wit:

57 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

The United States of America to W. Fish Wilson, County Collector of taxes of the County of Marion; Richard Farrell, County Collector of taxes of the County of Clinton; H. W. Finke, County Collector of taxes of the County of Washington; James H. Thimming, County Collector of taxes of the County of Perry, and James H. McGuire, County Collector of taxes of the County of Randolph, in the State of Illinois, Greeting:

We command you and every of you, that you appear before our Judge of our District Court of the United States of America, for the Eastern District of Illinois, at East St. Louis, in said District, on the 23rd day of June, A. D. 1921, at 9 o'clock A. M., to answer the — bill of complaint of Illinois Southern Railway Company, William H. Wheelock, as Receiver of the Property of the Illinois Southern Railway Company, William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company, this day filed in the office of the Clerk of said Court, in the City of East St. Louis then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the Eastern District of Illinois to execute.

Witness, the Hon. George W. English, Judge of the District Court of the United States for the Eastern District of Illinois, at East St. Louis aforesaid, this 3rd day of June in the year of our Lord one thousand nine hundred and twenty-one and of our Independence, the 145th year.

[SEAL.] ARTHUR W. CHARLES,
Clerk.

Memorandum.

The above named defendants notified that unless they shall file their answer or other defense in the office of the Clerk of said Court, at E. St. Louis, aforesaid, on or before the 20th day after service of this process, excluding the day of such service, the bill of complaint filed herein will be taken against them as confessed, and a decree entered accordingly.

ARTHUR W. CHARLES,
Clerk.

58 [Endorsed:] Marshal's No. 2288. General No. 1641. District Court of the United States, Eastern District of Illinois. Illinois Southern Railway Company et al., vs. W. Fish Wilson, County Coll. of Marion County, et al. Chancery subpœna. Returnable 23rd day of June A. D. 1921. Arthur W. Charles, Clerk. Filed June 8, 1921. Arthur W Charles, Clerk. Complainant's Solicitor-, George B. and George M. Gillespie (3-184).

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I have duly served the within writ upon the within named James H. McGuire, County Collector of Taxes of the County of Randolph, State of Illinois, by reading and delivering a true copy of same to him at Chester, Illinois, the 4th day of June, A. D. 1921, and upon the within named James H. Thimmig, County Collector of Taxes of the County of Perry, State of Illinois, by reading and delivering a true copy of same to him at Pinckneyville, Illinois, the 5th day of June, A. D. 1921.

COOPER STOUT,
United States Marshal,
By J. F. SEMITH,
Deputy.

Marshal's Fees, $14.57.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I have duly served the within writ upon the within named W. Fish Wilson, County Collector of Taxes of the County of Marion, State of Illinois, by reading and delivering a true copy of same to him at Salem, Illinois, the 4th day of June, A. D. 1921, and upon the within named Richard Farrell, County Collector of Taxes of the County of Clinton, State of Illinois, by reading and delivering a true copy of same to him at Carlyle, Illinois, the 4th day of June, A. D. 1921.

COOPER STOUT,
United States Marshal,
By P. D. PARKER,
Deputy.

Marshal's Fees, $11.90.

UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I have duly served the within writ upon the within named H. W. Finke, County Collector of Taxes of the County of Washington, State of Illinois, by reading and delivering a true copy of same to him at Nashville, Illinois, the 4th day of June, A. D. 1921.

COOPER STOUT,
United States Marshal,
By NELL M. SHEDD,
Deputy.

Marshal's Fees, $6.54.

59 And afterwards on to-wit, the 10th day of June, A. D. 1921, the following further proceedings were had in said Court, in said cause and entered of record, to-wit:

60 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois, Friday, June 10, 1921.

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Preliminary Injunction Order.

Be it remembered that on this day being the 10 day of June 1921, came the Complainants in the above entitled cause before me at the Chambers of the United States District Court for the Eastern District of Illinois, in the Federal Building, City of East St. Louis, State of Illinois, and move the Court for a preliminary injunction in said cause, and that the said defendants each having had notice of said application and the defendants all by counsel, appearing, upon consideration of the bill, together with the proof submitted, the Court finds that the allegations of the bill are for the purposes of this hearing to be taken as true and that the Complainants are entitled to a preliminary injunction as prayed.

It is hereby ordered that the temporary restraining order heretofore granted shall be continued in force as a preliminary injunction in accordance with the prayer of said bill, and the said defendants and each of them, their deputies, agents, clerks, servants, assistants and attorneys are hereby commanded and enjoined to utterly

61 refrain and absolutely desist on the first day of any term of the County Court of their several and respective counties or on any other day of said courts at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for or prayed on account of delinquent taxes for the years 1917 to 1920 inclusive from reporting to the County Clerks and the Clerks of the County Courts of their several counties and each of them any lands, lots or railroad properties belonging or assessed to or taxed in the name of the Illinois Southern Railway Company, or the Missouri and Illinois Railroad Company for any delinquent taxes, special as-

sessments, interest, penalties or costs for any or either of the said years 1917 to 1920 inclusive, or from applying to or praying any judgment against the said Illinois Southern Railway Company or the Missouri and Illinois Railroad Company or from attempting to enforce the collection of any of said taxes from any of the said properties, or from the property of either of the said Complainants for any delinquent taxes for any of the years 1917 to 1920 inclusive.

Dated this 10 day of June, 1921.

GEORGE W. ENGLISH,
Judge United States District Court for the Eastern District of Illinois.

62 And afterwards on to-wit, the 23rd day of June, A. D. 1921, there was filed in the office of the Clerk of said Court, in said cause, Motion to Dissolve Temporary Injunction and to Dismiss Bill of Complaint, which said motion was and is in the words and figures, following, to-wit:

63 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Motion to Dissolve Temporary Injunction and to Dismiss for Insufficiency of Bill.

To the Honorable Geo. W. English, Judge of the United States District Court for the Eastern District of Illinois:

Now come the several defendants in the above proceeding by their respective solicitors, and move the Court to dissolve the preliminary injunction heretofore granted in this proceeding and to dismiss this action for the following reasons:

First. Because there is insufficiency of fact to constitute a valid cause of action in equity.

Second. It appears from the alleged facts in said bill that the complainants have an adequate remedy at law.

Third. It appears from the said bill of complaint that the complainants have been guilty of laches.

Fourth. It appears from the bill of complaint that the property involved in this proceeding has been sold and deeds and other conveyances of transfer made and executed, conveying the same to the purchasers, subject to the several liens for unpaid taxes thereon, and it is specifically averred in the said bill that the complainants,
64 William T. Abbott and the Missouri and Illinois Railroad Company, by contract became liable to pay such taxes as are legally due upon said property, by reason whereof the complainant receiver has no further interest in said property or liens or taxes, and it does not appear that there is such diversity of citizenship of said purchasers as entitles this court to take jurisdiction of this proceeding.

Fifth. The allegation in said bill that certain adjustments of the complainant receiver's accounts may depend upon the amount of taxes legally due upon the property involved is but a mere conclusion of the pleader and is not such an allegation of facts as warrant this court in taking jurisdiction or as entitle the said receiver or other complainants to equitable relief herein.

Sixth. The material averments in the bill are mere conclusions and not statements of facts and are not sufficient to warrant this court in taking jurisdiction thereof.

Seventh. The facts set up in said bill are not sufficient to entitle the complainants to equitable relief, either by a preliminary or permanent injunction.

Wherefore, by reason of the foregoing these defendants pray the Court to dissolve the preliminary injunction heretofore issued in this proceeding and to dismiss this action.

These defendants also especially move the court to dismiss all that part of said bill of complaint contained in Division VII thereof being the allegations contained on pages 29 to 32 inclusive of said bill, because the illegalities, irregularities and informalities charged therein as having been committed by the several local taxing offices are not matters of which this court can take cognizance in this proceeding and are not such matters as entitle the complainants to equitable relief by injunction.

Respectfully submitted,

EDWARD J. BRUNDAGE,
Attorney General, State of Illinois;
THOS. WILLIAMSON,
Assis'ant Attorney General;
L. F. HACHMAN,
State's Atttorney, Randolph County;
65 CHAS. E. DEW,
State's Attorney, Marion County;
H. H. HOUSE,
State's Attorney, Washington County;
F. H. KRUGER,
MALLORY L. BURROUGHS,
Solicitors for Defendants.

Endorsed: #1641. In the United States District Court, Eastern District of Ill. Illinois Southern Railway Co., et al. vs. W. Fish Wilson, et al. Bill in Chancery. Motion to Dissolve temporary Injunction and to Dismiss for Insufficiency of Bill. Filed June 23, 1921. Arthur W. Charles, Clerk.

66 And afterwards on to-wit, the 20th day of December, A. D. 1921, the following further proceedings were had in said Court, in said cause and entered of record, to-wit:

67 In the District Court of the United States for the Eastern District of Illinois.

Tuesday, December 20th, A. D. 1921.

Present: Honorable George W. English, Judge.

In Equity

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company.

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois.

Now on this 20th day of December, A. D. 1921, it is ordered by the Court that this cause be, and the same is hereby set for hearing on Demurrer, on Wednesday, January 4th, A. D. 1922, at East St. Louis, in said District.

68 And afterwards on to-wit: the 4th day of January, A. D. 1922, the following further proceedings were had in said Court, in said cause and entered of record, to-wit:

69 In the District Court of the United States for the Eastern District of Illinois.

Wednesday, January 4th, A. D. 1922.

Present: Honorable George W. English, Judge.

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY et al.

vs.

W. FISH WILSON, County Collector of Marion County, Illinois, et al.

Now on this 4th day of January, A. D. 1922, it is ordered by the Court, that this cause be and the same is hereby reset for hearing on Demurrer on Tuesday, January the 24th, A. D. 1922 at the hour of nine thirty o'clock A. M. at East St. Louis, in said District.

70 And afterwards on to-wit, the 24th day of January, A. D. 1922, the following further proceedings were had in said Court, in said cause, and entered of record, to-wit:

71 In the District Court of the United States for the Eastern District of Illinois.

Tuesday, January 24th, A. D. 1922.

Present: Honorable George W. English, Judge.

In Equity.

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY et al.

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion, et al.

Now on this 24th day of January, A. D. 1922, comes the complainants, the Illinois Southern Railway Company, William W. Wheelock, as Receiver of the Illinoid Southern Railway Company, William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company, by George B. and George M. Gillespie, their solicitors, and the defendants, W. Fish Wilson, County Collector of Taxes of the County of Marion, Richard Farrell, County Collector of Taxes of the County of Clinton, H. W. Finke, County Collector of Taxes of the County

of Washington, James Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, by June C. Smith, H. H. House, C. F. Dew, and L. F. Hachman, their solicitors.

And now this cause coming on for hearing on Motion to dissolve the temporary injunction heretofore granted herein and to dismiss the complainants' bill of complaint, and the Court having heard solicitors for respective parties, and being fully advised in the premises, overrules said motion, to which ruling of the Court, the defendants, by their respective solicitors, then and there except, and the defendants are ruled to answer on or before the 20th day of February A. D. 1922.

72 And afterwards on, to-wit the 20th day of February, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Answer of the Defendants, which said Answer was and is in the words and figures following, to-wit:

73 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, Complainants,

VS.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of the County of Clinton; William H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Texas of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Answer of the Defendants, W. Fish Wilson, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; William H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Hereinafter Referred to as the Defendants.

These defendants, by Charles F. Dew, State's Attorney of Marion County, Hugh V. Murray, State's Attorney of Clinton County, H. H. House, State's Attorney of Washington County, Judson E. Harris, State's Attorney of Perry County, Logan F. Hatchman, State's At-

torney of Randolph County, and June C. Smith, their solicitors, to the bill of complaint filed herein, or to such parts thereof as
74 these defendants are advised that it is material for them to make answer unto, answering say:

They admit that this is a suit of a civil nature and that the matter and sum in controversy, exclusive of the interest and costs, exceeds the sum of Three Thousand ($3,000.00) Dollars, and that the subject matter and the defendants are located and reside in the Eastern District of the United States Court for the State of Illinois.

I.

These defendants further answering, admit that the Illinois Southern Railway Company is a corporation, duly organized under the Railroad Incorporation Act of the State of Illinois, and that William W. Wheelock was the duly appointed Receiver of the property of said Railway Company by the United States District Courts for the Northern District of Illinois, the Eastern District of Illinois and the Eastern District of Missouri, in a certain foreclosure proceeding in said courts, and that as such Receiver he continued to operate the property of said Railway Company in the manner and up to the time mentioned in complainants' bill of complaint, and that he is still such Receiver and has not been discharged from his said trust.

These defendants further answering, admit that the foreclosure proceedings were instituted and carried on and decrees entered therein as alleged in paragraph I of the bill of complaint, filed herein. They admit that the property of the Illinois Southern Railway Company was sold under said decree of foreclosure, and by assignment, that the title to said property was transferred to and vested in the Missouri and Illinois Railroad Company, by William T. Abbott, the purchaser at said foreclosure sale, but aver that said sale was made subject to the taxes due to these defendants and to the taxing bodies and districts within the countries aforesaid, and that the said Missouri and Illinois Railroad Company assumed
75 and agreed to pay such taxes as might be found to be due from the said Illinois Southern Railway Company, and that by virtue of said foreclosure sale and said assignment from the purchaser thereof at said foreclosure sale, subject to said taxes and certain other indebtedness due from said Illinois Southern Railway Company, then a lien upon the property of said Company.

II.

These defendants further answering, admit that the defendant, W. Fish Wilson, is the duly elected and qualified County Collector for Marion County, Illinois, and that the defendant, Richard Farrell, is the duly elected and qualified County Collector of Clinton County, Illinois, that the defendant, James H. Thimming, is the duly elected and qualified County Collector of Perry County, Illinois, that the defendant, James H. McGuire, is the duly elected and qualified County Collector of Randolph County, Illinois, and that

the defendant, H. W. Finke was, at the time of the filing of said bill of complaint, the duly elected and qualified County Collector of Washington County, Illinois, but that said H. W. Finke died subsequent to the filing of said bill of complaint, and the said William H. Porter was appointed to succeed him as such County Collector of Washington County, Illinois, and is now the duly elected and qualified County Collector of Washington County, Illinois.

III.

These defendants further answering, admit that the complainant, Illinois Southern Railway Company, subject to the mortgage and receivership mentioned in the said bill of complaint, has since prior to the year 1917 been in possession, a part of the time, and operating a railroad, with the appurtenances thereunto belonging, extending from Salem, in the County of Marion, and through the Counties of Marion, Clinton, Washington, Perry and Randolph, in the State of Illinois, to a point in the City of Chester, in Randolph County, and thence by ferry across the Mississippi River to Little Rock
76 Landing, in St. Genevieve County, and from thence to Bismarck, in the State of Missouri, as set forth in paragraph III in the bill of complaint herein.

These defendants further answering say, that they are not advised as to whether the Centralia and Chester Railroad Company formerly owned the portion of railroad track, described in the bill of complaint, prior to 1900, or whether the same was purchased from John R. Walsh, and are not advised as to the ownership of said property, as set forth in paragraph III of said bill of complaint, and neither admit nor deny the allegations of ownership of said property as mentioned in said paragraph.

These defendants further answering, admit that the length of said railroad from Salem, Illinois, to Bismarck, Missouri, is approximately 136 miles and that the same has been operated as one property since about August, 1903, and admit that the territory served by said railroad is in part agricultural and coal mining, and aver the truth to be that that portion of said railroad, located within the State of Missouri, serves an extensive mining district and numerous general mines, lead mines, glass factories and other industries.

These defendants further answering, deny that said railroad was never patronized to an extent that would enable it to earn operating expenses and fixed charges, and deny that during the greater portion of that time it was unable to earn operating expenses and deny that it has never paid a fair return on the actual investment in said railroad or upon the reasonable value of said property.

These defendants further answering, say that they are not advised whether the money produced from the sale of the bonds mentioned in the bill of complaint was economically expended and went into the property, and neither admit nor deny said allegations. They admit, that during the period, mentioned in the bill of com-
77 plaint, that there was put into the property at least $4,200,000.00, and aver the truth to be that a much larger amount, or sum of more than $8,000,000.00 was invested in the property.

These defendants further answering, admit,, that in said foreclosure suits in equity, the facts in relation to the passenger condition and operation of said railroad and its inability to each operating expenses and the return upon the investment was alleged and that said averments were considered by the Court, but aver the truth to be that these defendants were not, nor were they or either of them a party to said suit, and further, that the findings of the Court on said issues and allegations in said foreclosure suit were not binding upon these defendants or either of them, and have no bearing or influence upon the present litigation. That said foreclosure suit was a suit solely between the holders of bonds and the trustees of the mortgages mentioned.

These defendants further answering, admit that decrees were entered in said foreclosure suit, as alleged in the bill of complaint, but aver that said decrees were not binding on these defendants, or either of them, who are not parties to said suit.

These defendants further answering, admit that the value of the property of the Illinois Southern Railway Company on June 26, 1920, was substantially the same that same had been when the property was assessed for taxation in the years 1917, 1918, 1919 and 1920; they deny that the value of said property, for the purpose of taxation at that time, was not to exceed $600,000.00, and that the part thereof located in the State of Illinois did not exceed $500,000.00, but aver the truth to be that each of said assessments were not in excess of the full fair cash value thereof equalized and reduced in accordance with the Statutes of the State of Illinois, and in
78 accordance with the rules of the State Board of Equalization and the Tax Commission, and aver that said property was valued, equalized and assessed upon the same basis as all other property in the State of Illinois.

These defendants further answering, admit that said property was offered for sale for the payment of the taxes in the years mentioned in said bill of complaint but deny that no one bid thereon because the property was assessed at more than its full, fair cash value when equalized according to law, and further, aver that the only reason said property was not sold and the only reason bidders would not bid thereon was because of the fact that the same was in litigation in foreclosure suit.

IV.

These defendants further answering, admit that the said Board of Equalization in the years 1917 and 1918, and the Tax Commission in the years 1919 and 1920 made an assessment against the property of the said railroad company, located in the State of Illinois, for the purpose of taxation, and they admit that it was the duty of the State Board of Equalization and the Tax Commission to inquire into the question of the full, fair cash value of said property, consider the elements of value thereof and ascertain and fix the value on a mileage basis, or some other reasonable basis and equalize the same according to law, but they deny that it was the duty of

said Board of Equalization and Tax Commission to equalize the value of said property by raising or reducing the same above or below the actual fair cash value thereof, and deny that the method set out in paragraph IV of said bill of complaint was the correct and lawful method for equalizing and valuing property for assessment.

These defendants further answering, admit that the Illinois Southern Railway Company and its Receiver made returns in the years 1917, 1918, 1919 and 1920, as alleged in said paragraph of
79 said bill of complaint, but aver the truth to be, that said returns did not show the full, fair cash value of said property and that the valuation fixed on said property in said returns in each of said years was far below its actual fair, cash value, and in each of said years said returns were fraudulent and false and were made for the purpose of avoiding taxation; these defendants deny that the fair cash value of said property was set out in said returns as required by law.

These defendants further answering, deny that an inquiry into said full, fair cash value of said property would have verified said returns for each of said years, but aver the truth to be, that any sort of a fair and honest investigation of said property would disclose that said returns were false and fraudulent and did not show the full, fair cash value of said property.

These defendants further answering, admit that in the years 1917 and 1918 the State Board of Equalization made an assessment against the property of said railway Company and that in the years 1919 and 1920 the said Tax Commission made an assessment against the property of said railway company, as set forth in paragraph IV of the bill of complaint herein, but deny that in making said assessment the Board and Commission neglected or refused to make any inquiry into the facts in relation to said rturns and the values stated therein, but aver that the said Board and Tax Commission did make a thorough and exhaustive investigathe values stated therein, but aver that the said Board of Tax Commissions did make a thorough and exhaustive investigation into the values of said property and the facts as to the truth of said returns and found the said returns were false and fraudulent, and deny that said Board and said Commission fraudulently or arbitrarily or without exercise of judgment and without equalizing the value of said property made said assessments, and aver that said property was assessed at its fair cash value, and aver that said Board and Commission, in making the assessments against said property, first after an exhaustive and full in-
80 vestigation, found the full fair cash value of said property and then equalized the same in accordance with the Statutes and upon the same basis as all other property was equalized, valued and assessed and made the assessment on said property in accordance with the Statutes and the Constitution of the State of Illinois, and the rules and regulations of said Board and said Tax Commission, and that said property was assessed without discrimination and upon the same basis as all other property was assessed, and that the

assessments made by said Board and said Tax Commission were fairly and honestly made and equalized according to law.

These defendants further answering, deny that the values fixed by said Board of Equalization and said Tax Commission were excessive, as set out in said bill of complaint, and deny that the valuation of said property for said years, set out in said paragraph of said bill of complaint, as fixed by the said Board and Tax Commission, were excessive or fraudulent.

These defendants further answering, admit that in the years 1917 and 1918, the assessed value of the property of the said railway company was fixed at one-third of the full value thereof as valued, found, fixed and equalized by said State Board of Equalization, and that in the years 1919 and 1920, the value of said property, as found, valued, fixed and equalized by said State Tax Commission, was used as the basis for the assessed value and one-half the value so fixed was taken as the assessed value thereof, and deny that said assessed value and said assessment was fraudulent or arbitrarily fixed by said Board or said Commission, and deny that the value so fixed exceeded the actual fair cash value of said property, and deny that assessment was made without investigation, and deny that said property was not equalized and said value fixed as on all other property in the State of Illinois, and deny that said property was over valued, and deny that by reason of said assessments the said railroad company was denied the equal protection of the law.

81 V.

These defendants further answering, deny that in the years from 1917 and 1920 inclusive, the local assessors of other property and the Board of Equalization and the Tax Commission adopted a method whereby such property assessed by local assessors was arbitrarily assessed at less than 10% of its full fair cash value, and deny that the value or plan averred in paragraph V of said bill of complaint was adopted by said Board or Tax Commission, but aver the truth to be, that the property of said railroad company was assessed by said State Board and said Tax Commission in the years above mentioned on the same basis and was equalized according to the same plans, rules and regulations as other property was assessed and equalized throughout the State of Illinois by the assessing officers, by said Board of Equalization and by the Tax Commission.

These defendants further answering, aver that in assessing property the said State Board and said Tax Commission in each of said years did take notice of the assessing of property in the State, other than railroad property, and assessed the property of said railroad company upon the same basis and equalized the same according to the same rules and regulations, and deny that the said State Board and Tax Commission disregarded and arbitrarily fixed the values, discriminating against said railroad company or the complainants herein, and deny that said methods of assessment were illegal or improper in any respect, and deny that these defendants, or any other person, by reason of said assessments, are threatening to take the property of the complainants in violation of the 14th Amendment.

VI.

These defendants further answering, admit that after said property of said railroad company had been assessed in accordance with the statutes and the Constitution of the State of Illinois, and equalized in accordance therewith, and with the rules and regulations of
82 the State Board of Equalization and the State Tax Commission for said years, that said assessed value was distributed in accordance with the statute in such case made and provided, and admit that the County Clerks of said Counties for each of said years distributed said values upon the railroad tax books in each of said counties in such manner that state, county, city, village, school district and other municipal taxes were extended upon the value so fixed according to the proportionate value of said railroad property lying within each of said taxing districts, but deny that said values were excessive, or that the taxes as extended were excessive, as alleged in the bill of complaint, and deny that there were included any items that were excessive or in excess of statutory rates of taxation.

These defendants further answering, aver that said valuations were made according to law and that there is now due to the several counties through which, or into which the said railroad tracks extend in the State of Illinois, the following amounts for taxes, interest, penalties and costs, viz:

83 Marion County.

Year.	Assessed value.	Current tax.	Back tax.	Penalties.	Costs.	Total.
1917	$92.095.00	$4.612.16	.....	$46.12	$1.98	$4.660.26
1918	92.243.00	4.530.05	$4.660.26	1.209.87	1.98	10,308.16
1919	62.435.00	4.922.06	10,308.16	3.522.97	1.98	18,755.17
1920	41.324.00	3,386.61	18,755.17	2,342.27	1.98	24,486.03
Total .	.....	.....	.....	.....	.....	24,486.03
Paid	.....	.....	.....	.....	.....	3,488.45
Due	.....	.....	.....	.....	.....	20,997.58

84 Clinton County.

Year.	Assessed value.	Current tax.	Back tax.	Penalties.	Costs.	Total.
1917	$14,383.00	$707.65	.....	.....	.....	$707.65
1918	14.414.00	619.79	$707.65	$178.73	.....	1,506.17
1919	19,723.00	633.11	1,327.44	540.98	.....	2,501.53
1920	13,891.00	500.06	1,878.85	1,063.04	.....	3,441.95
Total .	.....	.....	2,378.91	1,063.04	.....	3,441.95
Paid	.....	.....	534.19	.....	.....	.....
Due	.....	.....	1,844.72	1,063.04	.....	2,907.76

85 Washington County.

Year.	Assessed value.	Current tax.	Back tax.	Penalties.	Costs.	Total.
1917	$202,000.00	$7,321.86	.....	$2,013.59	.36	$9,335.81
1918	202,409.00	7,030.63	$9,335.81	492.14	.....	16,858.58
1919	277,919.00	7,143.16	16,858.58	500.02	.....	24,501.76
1920	193,717.00	5,111.85	24,501.76	.....	.....	29,613.61
Total .	.....	.....	.....	.....	.....	29,613.61
Paid	.....	.....	.....	.....	.....	3,724.89
Due	.....	.....	.....	.....	.....	25,888.72

86 Perry County.

Year.	Assessed value.	Current tax.	Back tax.	Penalties.	Costs.	Total.
1917	$12,205.00	.....	.....	.....	.....	.....
1918	12,232.00	.....	.....	.....	.....	.....
1919	16,841.00	.....	.....	.....	.....	.....
1920	12,070.00	.....	.....	.....	.....	.....
Total .	.....	.....	.....	.....	.....	$2,647.47
Paid	.....	.....	.....	.....	.....	312.07
Due	.....	.....	.....	.....	.....	2,335.40

87 Randolph County.

Year.	Assessed value.	Current tax.	Back tax.	Penalties.	Costs.	Total.
1917	$361,016.00	$15,364.88	.....	.....	.....	$15,364.88
1918	361,668.00	15,317.29	$15,364.88	$4,149.62	.....	34,831.79
1919	497,040.00	15,537.89	30,682.17	12,036.83	.....	58,256.89
1920	332,509.00	11,765.60	46,220.06	24,594.19	.26	82,580.11
Total .	.....	.....	57,985.66	24,594.19	.26	82,580.11
Paid	.....	.....	11,657.59	.....	.....	.....
Due	.....	.....	46,328.07	24,594.19	.26	70,922.52

88 These defendants further answering, deny that the statements of taxes contained in paragraph VI of said bill of complaint are correct, but aver the truth to be, that said statements are incorrect, and deny that said taxes so extended in each of said several counties are illegal or in excess of statutory and constitutional limitations of rates of taxation, but aver the truth to be, that the taxes extended in each of said several counties, together with the interest, penalties and costs above set forth are legal and valid and constitute a first claim upon all of the property of the complainants and are now due to said several counties as therein stated.

VII.

These defendants further answering, admit that in each of said years delinquent lists were made up into a tax judgment, forfeiture and redemption record and that notice was published and application made for judgment and that judgment was entered thereon in due form and that said property was offered for sale for delinquent

taxes in accordance with the Statute in such case made and provided, together with interest and penalties as provided by law; they deny that any illegal steps were taken in connection with the making up of such delinquent tax lists, the publication notice, the application for judgment or in the form of judgment, or in the manner in which said property was offered for sale for delinquent taxes, together with the interest and penalties thereon, or in entering said judgments.

These defendants further answering, deny that there was no return of any delinquent list containing a proper description of the properties of complainants by the County Collectors of said counties *on* any or either of said years of any of the taxes alleged to be delinquent, but aver the truth to be that delinquent lists were returned containing proper and legal descriptions of the property of the complainants in each of said counties, in each of said years, as required by the statute.

89 These defendants further answering, deny that notices of application for judgment for delinquent taxes were not given as required by law, and deny that same were not printed and published in a newspaper in said several counties, or otherwise, in the manner provided by law, but aver the truth to be that said several County Collectors in said several counties, in said several years, did give notices of application for judgment for delinquent taxes against the property of the complainants, as required by law, and that such notices were printed and published as required by law, and that such notices contained a list of the delinquent lands and lots of the complainants upon which taxes and special assessments remained due and unpaid and did specify the owners and the amounts due thereon, and by publication in due form of law of the term of court in which application would be made for such judgments, and gave notices of the dates on which said property would be offered for sale, if not paid, and did specify the place where same would be offered for sale, if not paid, and that each of said notices contained proper and legal descriptions of said property and that each of said notices were given by the respective County Collectors of said several counties, and aver the truth to be, that said notices nor either of them were defective and insufficient, informal or void.

And these defendants further answering say, that the printers, publishers and financial agents of said newspapers, in which said several notices were published, did attach thereto their certificate in due form of law, certifying to the publication of said notices in the manner and the time required by law, and that each of said Collectors in each of said counties in each of said years did present to said several courts, in which applications for judgment were made, such notices and certificates and filed the same in the offices of the Clerks of said courts and the same thereupon became a part of the records and proceedings of said several cases, as required by the Statutes of the State of Illinois, and in all things complied with said statutes.

90 These defendants further answering, aver the truth to be, that all said several collectors of said several counties, in each

of said years, did transcribe into a book prepared for that purpose, known as the tax judgment sale redemption and forfeiture record, a list of the delinquent lands and properties containing information necessary to be recorded and required by law to be recorded at least five days before the term of court at which said application for judgment was made, and that said transcript set forth the owners of the property of the complainants, a proper description of said property, the year or years for which taxes or special assessments were due, the valuation on which the tax was extended, the amount of consolidated and other taxes and special assessments, the amount of the interest, penalties and costs and the total charges and penalties against said property, as required by law; and aver the truth to be, that said transcripts were not defective and inadequate to inform the public of the true amount of taxes, special assessments, interest, penalties and costs due and unpaid upon the property of the complainants, and aver the truth to be, that said transcript was made in compliance with the statutes in such case made and provided, and were strictly in compliance therewith.

These defendants further answering, deny that there was contained in any delinquent tax list, publication notice or tax judgment record any items of excessive and illegal taxes, or any illegal and unjust penalties, excessive and undue interest, excessive charges and excessive penalties, and deny that said record was informal, inaccurate and short of compliance with the provisions of the Statutes of the State of Illinois, but aver that said transcripts and records did comply with all the requirements of the statutes in that behalf.

These defendants further answering, aver that in said several years, in each of said several counties, each of said collectors did make and subscribe an oath verifying the list of lands and lots in each of said counties assessed against the said complainants, or in which the said complainants were the owners or interested in, and did
91 set forth in said lists and records the correct and accurate descriptions of the lands upon which the said several collectors had been unable to collect taxes, special assessments, interest, penalties and other special, charges, as required by law, in each of said years, in each of said counties and did certify that the same remained due and unpaid, as required by the Statutes of the State of Illinois.

These defendants further answering, deny that the descriptions of the properties of the complainants in the tax judgment sale redemption and forfeiture records of said several counties for each of the said several years were defective, uncertain and insufficient, and deny that judgments entered thereon were incapable of being identified as being against the property of the complainants, but aver the truth to be, that said descriptions of the property of the complainants in said tax judgment sale redemption and forfeiture records were specific, certain, accurate and legal and that the judgments entered thereon could be identified as being against the property of the complainants and in all other respects comply with the statutes in such case made and provided.

These defendants further answering, deny that in each of said

years and in any or either of said counties that the Clerk's precept or certificate to the judgment and the certificate entered on the tax sale redemption and forfeiture record was not made and certified to on the day the said collector had advertised for sale, and deny that it was not entered on said record in the manner and form prescribed by the statutes of the State of Illinois, but aver the truth to be, that said judgments and said precepts in each of said counties in each of said years were certified to in the manner required by the statutes, and aver the truth to be that said precepts and certificates were not made after said sale, but aver that same were made at the times and in the manner required by law, and deny that said certificates and precepts were not regular in form, but aver the truth to be that said precepts and certificates were made in proper form and
92 in strict compliance with the statutes and were in all things legal and sufficient authority to the County Collectors of taxes to proceed with the sale thereunder in accordance with the statutes in such case made and provided.

These defendants further answering, deny that said judgments were informal, illegal and void, and deny they contained no placita or convening order of court, and deny that they did not follow the provisions of the Statute of the State of Illinois in identifying the property or persons against whom the judgments were attempted to be rendered, and deny that such judgments did not contain a proper, certain and adequate description of the property of the complainants. And these defendants aver the truth to be, that each of said judgments rendered against the property of the complainants, in each of said counties, were formal and legal judgments, made in strict compliance with the statutes of the State of Illinois, containing a legal placita or convening order of court, and did in all respects follow the statutes of the State of Illinois in identifying the property against which, or person or corporatinon against whom said judgments were rendered, and did contain a proper, certain, legal and adequate description of the property of the complainants, as required by law.

And these defendants further answering, deny that said judgments in any or either of said years, or any or either of said counties, contained any items of taxes or special assessments, interest, penalties and costs which were illegal, excessive or void, but aver the truth to be, that each and every of said items, contained in each and every judgment, were legal, proper and valid charges against the property therein described. And these defendants deny that said courts, entering said several judgments, were without jurisdiction, but aver the truth to be that said several courts, at the time said several judgments were entered, had jurisdiction of the parties and the subject matter.

93 And these defendants further answering, deny that the said several judgments, or any or either of them, or that the penalties charged against the property of the complainants, or any part thereof, are illegal and void for any reason whatever.

VIII.

These defendants further answering, admit that all of the taxes above mentioned in paragraph VI of this answer were legally levied and assessed on the property of the complainants in each of the years, 1917 to 1920 inclusive, and that they were extended against the property of the Illinois Southern Railway Company and became a lien on said property; that the purchaser thereof at foreclosure sale, to-wit: the said William T. Abbott, and his grantee the Missouri and Illinois Railroad Company, by the terms of said decree of foreclosure and the contract of purchase, became liable to pay said taxes as yere legally due on said property; they admit that the said complainant, William W. Wheelock, as Receiver, is still in office and exercising his trust as such Receiver, and admit that a large proportion of said taxes herein mentioned became a lien on said property while the same was in control of and being operated by said Receiver, and that the adjustment of said receiver's accounts will depend upon the amount of taxes due on said property; they admit that all of said taxes due have been carried forward from year to year as back taxes, and have been re-extended as such, together with the current year's taxes by the taxing officers of each of said Counties, as required by law, and that the same are now delinquent; they admit that it was the duty, under the statutes of the State of Illinois, of the collectors to carry said delinquent taxes forward and re-extend the same against the property of the complainants for the year 1921, as back taxes uncollected, and that it is the duty of the defendants herein and each of them to present to the County Courts of their respective counties delinquent lists of
94 all unpaid taxes at the times and in the manner required by law; they admit that all of said taxes are due and remain unpaid, but deny that said taxes or any part thereof are in excess of the amounts legally due and extended against said property, and aver that it was the duty of these defendants and each of them to extend said back taxes due and unpaid and carry the same in the delinquent list in the year 1921, and to certify in said delinquent year or prior years for taxes due and unpaid; but aver the truth to be, that they were enjoined from performing said duty by the injunction in this case.

These defendants further answering, admit that there are a large number of taxing districts in said several counties, and that it was during all of said years the duty of these defendants, in their respective counties, to apply to the County Courts of said several counties for judgments, interest, penalties and costs.

These defendants further answering, aver that on said several applications for judgments the said complainants had the right to appear and present whatever objections they desired to present to the entering of judgment for said taxes in each of said years, and that by presenting their objections to the entering of said judgments the said complainants had an adequate, full and complete remedy at law, and these defendants deny that said complainants are entitled to relief in this court of equity, or any court of equity, but aver the

truth to be that they have an adequate and complete remedy at law; they admit that said taxes in each of said years, in each of said counties, which were due and unpaid, were carried forward in each succeeding year as back taxes and that applications were made in each of said years, not only for the current taxes for the current year, but also re-application was made for taxes due for the prior years, and that beginning with the year 1917, the said complainants and each of them had the right to appear in the County Courts in each of said several counties and object to the entering of judgment for said taxes, interest, penalties and costs and had a right
95 to a full hearing on said objections and thereby had an adequate and complete remedy at law.

IX.

These defendants further answering, aver that they are not advised whether the complainants retained an expert accountant to examine and make a re-extension of the taxes due from said Companies, but aver the truth to be, that if they did retain such expert accountant, the statement contained in paragraph IX of said bill of complaint is not a correct statement, and if said statement is to be taken as evidence as to the qualifications of said supposed expert accountant, then these defendants aver that the said complainants did not employ an expert tax accountant, but only a pretended expert tax accountant, whose statement of taxes contained in paragraph IX of the bill of complaint is inadequate and not in compliance with the law, and they deny that said statement is a correct statement and that the same shows the taxes due from the complainants to the said several counties for the said several years.

These defendants further answering, admit that the said complainants did tender a certain amount of taxes to each of these defendants and that the amounts so tendered were accepted by these defendants as a credit upon the taxes due and not in full payment thereof; that the amount so tendered and accepted by these defendants as partial payment of the taxes so due them are correctly contained in paragraph VI of this answer. And these defendants aver the truth to be that all taxes, interest, penalties and costs shown in the statement in paragraph VI of this answer are legal and constitute a first lien upon all of the property described in the bill of complaint.

These defendants further answering, deny that said taxes were illegal, unconstitutional or void, and deny that the payment thereof, enforced through the process provided by law, would take
96 the property of the complainants without due process of law, or that it would deny to said complainants the equal protection of the law, and deny that the proceedings aforesaid are unconstitutional, discriminatory, fraudulent or illegal.

These defendants further answering, deny that by the manner of assessment, the State of Illinois, through its State Board of Equalization and State Tax Commission or other taxing officers, has denied or will deny to the complainants the equal protection of the constitution and laws, or that it will constitute the taking of their property without due process of law.

And these defendants further answering, deny each and every allegation in said bill of complaint, not hereinbefore admitted, and aver the truth to be that said several taxes and each and every item thereon are legal, valid and enforcible, and that the claims of the complainants are without equity and is simply a fraud on the part of the complainants to avoid the payment of taxes justly due and to defeat and defraud the said several counties and the said several taxing districts out of taxes legally due to them.

These defendants further answering, deny that the complainants are entitled to any relief in a court of equity; they deny all manner of combination and all charges of fraud and deny that the complainants are entitled to the relief sought or any part thereof.

And these defendants further answering, aver that the said complainants have had at all times an adequate and complete remedy at law.

And now these defendants, having fully answered said bill of complaint and each and every allegation thereof, pray to be hence dismissed with their reasonable charges and costs in this behalf most wrongfully sustained.

CHAS. F. DEW,
State's Attorney of Marion County;
HUGH V. MURRAY,
State's Attorney of Clinton County;
97 & 98 H. H. HOUSE,
State's Attorney of Washington County;
JUDSON E. HARRIS,
State's Attorney of Perry County;
LOGAN F. HACHMAN,
State's Attorney of Randolph County;
JUNE C. SMITH,
Solicitors for Defendants.

Endorsed: 1641 Illinois Southern Railway Co., et al. vs. W. Fish, County Collector of Taxes of Marion County, Illinois, et al. Answer of Defendants. Filed Feb. 20, 1922. Arthur W. Charles, Clerk.

99 [Endorsed:] Illinois Southern Railway Co., et al. vs. W. Fish Wilson, County Collector of Taxes of Marion County, Illinois, et al. Answer of Defendants. Charles F. Dew, Hugh V. Murray, H. H. House, Judson E. Harris, Logan F. Hachman, and June C. Smith, Solicitor for Defendants.

100 And afterwards on to-wit, the 12th day of April, A. D. 1922, there was filed in the office of the Clerk of said Court, in said Court a Stipulation, which said Stipulation was and is in the words and figures following, to-wit:

101 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY et al., Complainants,

v.

W. FISH WILSON, County Collector of Taxes of the County of Marion, et al., Defendants.

Bill in Chancery.

Stipulation.

It is hereby stipulated and agreed by counsel representing the respective parties to the above entitled suit that Mr. Henry Keefe, a court reporter, may be appointed by the court Special Master to take and report the evidence in the above entitled cause without findings.

Dated this 6th day of April, 1922.

GEO. B. & GEO. M. GILLESPIE,
Attorneys for Complainants.
CHAS. F. DEW,
LOGAN F. HACHMAN,
H. H. HOUSE,
J. E. HARRIS,
HUGH B. MURRAY,
JUNE C. SMITH,
Attorneys for Defendants.

Endorsed: In the United States District Court, Eastern District of Illinois. Illinois Southern Railway Company, et al. complainants, v. W. Fish Wilson, County Collector of Taxes of the County of Marion, et al. Defendants. Bill in Chancery. Stipulation. Filed Apr. 12, 1922. Arthur W. Charles, Clerk.

102 And on the same day, to-wit, the 12th day of April, A. D. 1922, the following proceedings were had in said Court, in said cause and entered of record, to-wit:

103 In the District Court of the United States, Eastern District of Illinois, Wednesday, April 12th, A. D. 1922.

In Chancery.

No. 1641.

Present: Honorable George W. English, Judge.

ILLINOIS SOUTHERN RAILWAY COMPANY et al.

vs.

W. FISH WILSON et al.

Bill for Injunction Relief.

Now on this 12th day of April, A. D. 1922, this cause coming on to be heard, upon motion of Counsel to refer the same to a Special Master to take and report the testimony.

And it appearing to the Court that a stipulation has been filed herein, signed by counsel representing all parties, in which it is stipulated and agreed that Mr. Henry Keefe, be appointed by the Court as Special Master to take and report the evidence in said cause.

And it appearing to said Court that said cause is now at issue, and that said cause should be referred, it is ordered that Henry Keefe be, and he is, hereby appointed Special Master to take the evidence in the above entitled cause, and that he report such testimony to this Court without any findings on either law or facts.

GEORGE W. ENGLISH,
Judge.

104 And afterwards on to-wit, the 1st day of May, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Motion to Set Aside Order of Reference, which said Motion was and is in the words and figures following, to-wit:

105 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collectors of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Now come the defendants in the above entitled cause and respectfully represent and show unto the court, that since the motion to dismiss in the above cause was heard and overruled by the court, the Supreme Court of the United States has rendered a decision upon the same issues raised by said motion to dismiss, which apparently changes the law on such issues as it was understood to be by both court and counsel at the time this motion was overruled, and which in all probability is decisive of the issues raised in this case by the motion to dismiss.

Now, therefore, these defendants respectfully ask leave to file this their motion for leave to set aside the order of reference heretofore entered in this cause, for leave to withdraw their answer hereto filed in this cause and to renew their motion to dismiss and file this, their additional motion to dismiss said suit on the face of the bill, upon the following grounds, viz:

It appears from the face of the bill of complaint filed herein that the only alleged invalidity of the taxes sought to be enjoined by the decree of this court consist wholly discriminatory over-valuation of the property of the complainants.

106 It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law and that no grounds are stated in said bill of complaint that would justify a Court of Equity in taking jurisdiction of the matters therein charged and stated.

Wherefore, the defendants respectfully pray that the order of reference may be set aside, the answer of defendants withdrawn and leave to file this motion granted, and that upon the final hearing of this

motion the same be sustained and said bill of complaint be dismissed for want of equity.

JUNE C. SMITH,
Solicitor for Defendants.

HUGH V. MURRAY,
C. F. DEW,
J. E. HARRIS,
H. H. HOUSE,
LOGAN H. HACHMAN,
State's Attys.

Endorsed: 1641. Ill. Southern Ry. Co. et al. vs. Wilson, County Collector, et al. Motion to Set Aside Order or Reference. Filed May 1, 1922. Arthur W. Charles, Clerk.

107 And afterwards on to-wit, the 7th day of July, A. D. 1922, the following further proceedings were had in said Court, in said cause, and entered of record, to-wit:

108 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois, Friday, July 7th, 1922.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Now on this 7th day of July, A. D. 1922, the same being one of the regular judicial days of the present term of this court, this cause coming on to be heard upon the motion of defendants heretofore filed in this cause to set aside the order of reference and for leave to withdraw answer and to dismiss the bill of complaint for want of equity, etc., and the Court having heard the arguments of counsel and having duly considered said motion, and being fully and sufficiently advised in the premises, it is ordered that the motion to set aside the

order of reference, heretofore entered in this cause, be and the same is hereby allowed and said order of reference is set aside.

It is further ordered, that said motion for leave to withdraw the answer, heretofore filed in said cause, be and the same is hereby allowed and said leave is granted and the answer herein is withdrawn.

It is further ordered, that the said motion to dismiss the bill of complaint, herein, for want of equity, be and the same is hereby overruled and denied.

109 To which action and order of the Court in overruling said motion to dismiss the bill of complaint, herein, for want of equity etc., the defendants and each of them except, which exception is allowed.

And thereupon, on the same day come the defendants, by their solicitors, and waive the right to answer the bill and elect to stand by their said motion to dismiss for want of equity, etc., and thereupon the said defendants and each of them is ruled to plead or answer herein instanter, and the said defendants being in court, by their said solicotors, and electing to stand on said motion and having refused to plead or answer herein further, pursuant to the order of the court, it is ordered that the defendants and each of them be and they are hereby called and defaulted and said default is entered against the said defendants and each of them.

GEORGE W. ENGLISH, *Judge.*

110 And afterwards on to-wit, the 7th day of August, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Motion for Entry of Decree, which said Motion was and is in the words and figures following, to-wit:

111 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

v.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Motion for Entry of Decree.

This 7th day of August, 1922, came the complainants by their solicitors and represent to the court that default was entered herein

more than thirty days prior to this date, on July 7, 1922, and move the Court to enter a decree pro confesso.

GEO. B. GILLESPIE,
Solicitors for Complainants.

Endorsed: 1641. In the United States District Court, Eastern District of Illinois. Illinois Southern Railway Company et al., Complainants, v. W. Fish Wilson, County Collector of Taxes of the County of Marion et al., Defendants. Motion for entry of decree. Filed Aug. 7, 1922. Arthur W. Charles, Clerk.

112 And on the same day to-wit, the 7th day of August, A. D. 1922, the following further proceedings were had in said Court, in said cause, and entered of record to-wit:

113 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois, Monday, August 7th, A. D., 1922.

No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

v.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; H. W. Finke, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

This cause came on to be heard upon the motion of the Complainants for a final decree upon the default heretofore on the 7th day of July, 1922, entered herein, and thereupon on consideration thereof it was ordered, adjudged and decreed as follows:

1. That the court finds that all of the matters and things alleged in the Bill are confessed by the Defendants, and, thereupon, the court finds all of the allegations of said Bill to be true; that this Court has jurisdiction of the subject-matter and of the parties.

2. That the equities of this case are in favor of the complainants and they are entitled to a decree as prayed in the Bill.

3. That the Complainants prior to the commencement of this suit tendered to each of the said Defendants all of the taxes legally due to them respectively as County collectors of their respective countries and such tax was accepted by them.

4. That all other taxes, interests, penalties and costs charged and extended against the property of the Complainants for the years 1917, 1918, 1919 and 1920 in each of the several counties of
114 Marion, Clinton, Washington, Perry and Randolph in the State of Illinois are excessive, fraudulent and void and were extended upon an assessment made by the Board of Equalization for the years 1917 and 1918 and by the Tax Commission of the State of Illinois for the years 1919 and 1920, in violation of the Fourteenth Amendment to the Constitution of the United States of America in that in the assessment, levy and extension of said tax the Complainants were denied the equal protection of the laws of the State Board of Equalization and the taxing officers of the State of Illinois, and the assessment, levy and extension of said tax was and is an attempt to and would take the property of the said Complainants without due process of law.

5. That the Complainants are entitled to an injunction as prayed restraining the said Defendants and each of them from the collection of said tax and to have the injunction heretofore issued herein made permanent.

6. That a schedule of said taxes showing the amount thereof extended, the amount of illegal and excessive tax, the balance after the deduction of excessive and illegal taxes and the amount tendered, admitted to be due and paid is as follows:

County.	Year.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be due and tendered.
Marion	1917	$4,612.16	$393.56	$4,218.60	$843.72
"	1918	4,530.05	1,021.60	3,508.45	701.69
"	1919	4,922.06	258.51	4,663.55	932.71
"	1920	3,386.51	355.53	3,030.98	1,010.33
Total		17,450.78	2,029.20	15,421.58	3,488.45
Clinton	1917	707.65	21.57	686.08	137.22
"	1918	619.79	21.62	598.17	119.64
"	1919	633.11	7.22	625.89	125.18
"	1920	500.06	43.61	456.45	152.15
Total		2,460.61	94.02	2,366.59	534.19
Washington	1917	7,321.86	2,615.16	4,706.70	941.34
"	1918	7,030.63	2,263.78	4,766.85	953.37
"	1919	7,143.16	3,079.65	4,063.51	812.70
"	1920	5,111.85	2,059.39	3,052.46	1,017.48
Total		26,607.50	10,017.98	16,589.52	3,724.89

Total Tax Extended Against the Illinois Southern Railroad Company.—Continued.

County.	Year.	Tax extended.	Illegal and excess tax.	Balance.	Amount admitted to be due and tendered.
Perry	1917	411.97	.....	411.97	82.39
"	1918	424.04	89.69	334.35	66.87
"	1918	413.26	61.11	352.15	70.43
"	1920	368.60	91.46	277.14	92.38
Total		1,617.87	242.26	1,375.61	312.07
Randolph	1917	15,364.88	544.29	14,820.59	2,964.12
"	1918	15,317.29	1,164.70	14,152.59	2,830.52
"	1919	15,537.89	1,294.33	14,243.56	2,848.71
"	1920	11,765.60	2,722.89	9,042.71	3,014.24
Total		57,985.66	5,726.21	52,259.45	11,657.59
		Recapitulation.			
Marion		17,450.78	2,029.20	15,421.58	3,488.45
Clinton		2,460.61	94.02	2,366.59	534.19
Washington		26,607.50	10,017.98	16,589.52	3,724.89
Perry		1,617.87	242.26	1,375.61	312.07
Randolph		57,985.66	5,726.21	52,259.45	11,657.59
Grand Total		106,122.42	18,109.67	88,012.75	19,717.19

116 It is, therefore, ordered, adjudged and decreed that the said defendants and each of them, their deputies, agents, clerks, servants, assistants and attorneys and all other persons operating or confederating with them or acting by, through or under their directions be and they and each of them are commanded and restrained perpetually to refrain and absolutely desist from on the first day of any term of the County Court of their several and respective counties at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes, interests, penalties and costs for the years 1917, 1918, 1919, and 1920, from reporting to the County Clerks and Clerks of the County Courts of their respective and several counties any lands, lots or railroad property belonging to or assessed to or in the name of the Illinois Southern Railway Company, or the Missouri and Illinois Railroad Company, for delinquent taxes, special assessments, interests, penalties or costs for any or either of the years 1917, 1918, 1919 and 1920, or from applying for or praying any judgment against the said Illinois Southern Railway Company, or the Missouri and Illinois Railroad Company or the property of either of them for any delinquent taxes for the years aforesaid and from bringing any suit or suits for the collection of said taxes, interests, penalties or costs for said years other than the sums already paid and accepted by said defendants for each of said counties; that this order shall extend against the said Defendants and their respective successors in office; that the preliminary injunction granted herein be and the same is hereby continued in full force and virtue.

It is further ordered That the Clerk of this Court tax the costs herein against the Complainants, and that an execution may issue therefor.

GEORGE W. ENGLISH,
United States District Judge.

117 And afterwards on to-wit, the 29th day of August, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Petition for Appeal, which said Petition was and is in the words and figures following, to-wit:

118 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Petition for Appeal.

To the Honorable George W. English, District Judge:

The above named W. Fish Wilson, County Collector of Taxes of the County of Marion, in the State of Illinois, Richard Farrell, County Collector of Taxes of the County of Clinton, in the State of Illinois, W. H. Porter, County Collector of Taxes of the County of Washington, in the State of Illinois, James H. Thimming, County Collector of Taxes of the County of Perry, in the State of Illinois, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, feeling aggrieved by the order and decree rendered and entered in the above entitled cause on the *the* 7th day of July, A. D. 1922, and the final decree entered
119 in said cause on the 7th day of August, A. D. 1922, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons set forth in the assignment of errors, filed herewith, and they pray that their appeal be allowed and that citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of said court in such case made and provided.

And your petitioners further pray that proper orders relating to the required security to be required of them be made.

W. F. WILSON,
County Collector of Taxes of the County of Marion, in the State of Illinois;

RICHARD P. FARRELL,
County Collector of Taxes of the County of Clinton, in the State of Illinois;
W. H. PORTER,
County Collector of Taxes of the County of Washington, in the State of Illinois;
JAMES H. THIMMING,
County Collector of Taxes of the County of Perry, in the State of Illinois;
JAMES H. McGUIRE,
County Collector of Taxes of the County of Randolph, in the State of Illinois,
By JUNE C. SMITH,
Solicitor for the Above-named Defendants.

Endorsed: Filed August 29, 1922, Arthur W. Charles, Clerk.

120 And on the same day to-wit, the 29th day of August, A. D. 1922, There was filed in the office of the Clerk of said Court, in the said cause, Assignment of Errors, which said Assignment of Errors was and is in the words and figures following, to-wit:

121 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Assignment of Errors.

Now come the defendants in the above entitled cause and file the following assignment of errors upon which they will rely upon their

prosecution of the appeal in the above entitled cause from the order and decree made and entered by this Honorable Court in said cause on the 7th day of July, A. D. 1922, and the final decree entered in said cause on the 7th day of August, A. D. 1922.

I.

That the United States District Court for the Eastern District of Illinois erred in overruling the motion to dismiss the bill of complaint herein for want of equity.

II.

That the United States District Court for the Eastern Dis-
122 trict of Illinois erred in not sustaining the motion of defendants to dismiss the bill of complaint herein for want of equity.

III.

That the United States District Court for the Eastern District of Illinois erred in finding and holding that the said bill of complaint was sufficient to give the Court jurisdiction to grant equitable relief.

IV.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that the allegations of the bill of complaint herein were not sufficient to give the court jurisdiction to grant equitable relief.

V.

That the United States District Court for the Eastern District of Illinois erred in refusing to dismiss the bill of complaint herein for want of equity.

VI.

That the United States District Court for the Eastern District of Illinois erred in holding that the bill of complaint herein was sufficient on its face to give the court jurisdiction to grant equitable relief.

VII.

That the Unted States District Court for the Eastern District of Illinois erred in refusing to hold that under the allegations of the bill of complaint herein the complainants had an adequate remedy at law.

VIII.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that said bill of complaint was insufficient to give the court jurisdiction or authorize the court to

grant relief either under the due process clause or the equal
123 protection clause of the Constitution.

IX.

That the United States District Court for the Eastern District of Illinois erred in refusing to dismiss said bill of complaint for want of equity and on the ground that the said bill shows on its face that the complainants had an adequate remedy at law.

X.

That the United States District Court for the Eastern District of Illinois erred in denying and overruling the motion to dismiss the bill of complaint herein for the reason that the same was not sufficient in law to give the court jurisdiction or to entitle the complainants to equitable relief.

Wherefore, the appellants pray that said decree be reversed and that said District Court of the United States be ordered to enter a decree reversing the decision of said Court in said cause and dismissing said bill for want of equity.

JUNE C. SMITH,
Solicitor for Appellants.

Endorsed: Filed August 29, 1922, Arthur W. Charles, Clerk.

124 And on the same day to-wit, the 29th day of August, A. D. 1922, the following further proceedings were had in said Court, in said cause, and entered of record to-wit:—

125 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James M. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Order Allowing Appeal.

On motion of June C. Smith, Esquire, solicitor and counsel for defendants, it is hereby ordered that an appeal to the Supreme Court of the United States from the order and decree entered in said cause on this the 7th day of July, A. D. 1922, and the final decree entered in said cause on the 7th day of August, A. D. 1922, be and the same is hereby allowed, and that a certified copy of the transcript of the record, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of $1,000.00, with Hugh V. Murray, Charles F. Dew, H. H. House,
J. E. Harris and Logan F. Hachman and June C. Smith, as
126 sureties, and that said bond be filed within 30 days from this date.

Dated this 29th day of August, A. D. 1922.

GEORGE W. ENGLISH,
District Judge.

127 And afterwards on to-wit, the 1st day of September, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Bond on Appeals, which said Bond was and is in the words and figures following, to-wit:—

128 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, William W. Wheelock, as Receiver of the Property of the Illinois Southern Railway Company, William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Bond on Appeal.

Know all men by these presents, That W. Fish Wilson, County Collector of Taxes of the County of Marion, in the State of Illinois, Richard Farrell, County Collector of Taxes of the County of Clinton, in the State of Illinois, W. H. Porter, County Collector of Taxes of the County of Washington, in the State of Illinois, James H. Thimming, County Collector of Taxes of the County of Perry, in the State of Illinois, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, as principals, and Hugh V. Murray, of the County of Clinton, Charles F. Dew, of the County of Marion, H. H. House of the County of Washington, J. E. Harriss, of the County of Perry and Logan F. Hachman, of the County of Randolph and June C. Smith of the County of Marion, all of the State of Illinois, as sureties, are held and firmly bound unto the Illinois Southern Railway Company, William W. Wheelock, as Receiver of the property of the Illinois Southern Railway
129 Company, William T. Abbott, Trustee of the bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company in the sum of $1,000.00, lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and each of our executors and administrators by these presents.

Sealed with our Seals and dated this 31 day of August, A. D. 1922.

Whereas, the above bounden W. Fish Wilson, County Collector of Taxes of the County of Marion, in the State of Illinois, Richard Farrell, County Collector of Taxes of the County of Clinton, in the State of Illinois, W. H. Porter, County Collector of Taxes of the County of Washington, in the State of Illinois, James H. Thimming, County Collector of Taxes of the County of Perry, in the State of Illinois, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment and decree of the District Court for the Eastern District of Illinois, in the above entitled cause.

Now therefore, the condition of this obligation is such that if the above named W. Fish Wilson, County Collector of Taxes of the County of Marion, in the State of Illinois, Richard Farrell, County Collector of Taxes of the County of Clinton, in the State of Illinois, W. H. Porter, County Collector of Taxes of the County of Washington, in the State of Illinois, James H. Thimming, County Collector of Taxes of the County of Perry, in the State of Illinois, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, shall prosecute their said appeal to
130 effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

W. F. WILSON, [SEAL.]
County Collector of Taxes of the County of Marion, in the State of Illinois.
RICHARD P. FARRELL, [SEAL.]
County Collector of Taxes of the County of Clinton, in the State of Illinois.
W. H. PORTER, [SEAL.]
County Collector of Taxes of the County of Washington, in the State of Illinois.
THOMAS H. THIMMING, [SEAL.]
County Collector of Taxes of the County of Perry, in the State of Illinois.
JAMES H. McGUIRE, [SEAL.]
County Collector of Taxes of the County of Randolph, in the State of Illinois.
CHAS. F. DEW. [SEAL.]
HUGH V. MURRAY. [SEAL.]
H. H. HOUSE. [SEAL.]
L. F. HACHMAN. [SEAL.]
J. E. HARRISS. [SEAL.]
JUNE C. SMITH. [SEAL.]

131 STATE OF ILLINOIS,
County of Marion, ss:

On this 31 day of August, A. D. 1922, personally appeared before me W. Fish Wilson, County Collector of Taxes of the County of Marion, in the State of Illinois, June C. Smith and Charles F. Dew,

respectively known to me to be the persons described in and who duly executed the foregoing instrument, as parties thereto, and severally acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said W. Fish Wilson and Charles F. Dew and June C. Smith being respectively by me duly sworn says, each for himself and not one for the other, that he is a resident and householder of said County of Marion, and that he is worth the sum of $2,000.00 over and above his just debts and legal liabilities and property exempt from execution.

W. FISH WILSON.
CHAS. F. DEW.
JUNE C. SMITH.

Subscribed and sworn to before me this 31 day of August, A. D. 1922.

[SEAL.] W. H. BETTS,
County Clerk.

STATE OF ILLINOIS,
County of Clinton, ss:

On this 31 day of August, A. D. 1922, personally appeared before me Richard Farrell, County Collector of Taxes of the County of Clinton, in the State of Illinois and Hugh V. Murray, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto and severally acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said Richard Farrell and Hugh V. Murray being respectively by me duly sworn says, each for himself and not one for the other, that he is a resident and householder of said County of Clinton and that he is worth the sum of $— over and above his just debts and legal liabilities and property exempt from execution.

RICHARD P. FARRELL.

Subscribed and sworn to before me this 31 day of August, A. D. 1922.

[SEAL.] MARY McGOWAN,
Notary Public.

132 STATE OF ILLINOIS,
County of Washington, ss:

On this 31 day of August, A. D. 1922, personally appeared before me W. H. Porter, County Collector of Taxes of the County of Washington, in the State of Illinois, and H. H. House, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and severally acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said W. H. Porter and H. H. House being respectively by me duly sworn says, each for himself and not one for the other,

that he is a resident and householder of said County of Washington and that he is worth the sum of $— over and above his just debts and legal liabilities and property exempt from execution.

W. H. PORTER.
H. H. HOUSE.

Subscribed and sworn to before me this 18 day of August, A. D. 1922.

[SEAL.] H. F. HECKERT,
County Clerk.

STATE OF ILLINOIS,
County of Perry, ss:

On this 25th day of August, A. D. 1922, personally appeared before me James H. Thimming, County Collector of Taxes of the County of Perry, in the State of Illinois, and J. E. Harriss, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and severally acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said James H. Thimming and J. E. Harriss being respectively by me duly sworn says, each for himself and not one for the other, that he is a resident and householder of said County of Perry and that he is worth the sum of $1,000.00 over and above his just debts and legal liabilities and property exempt from execution.

THOMAS H. THIMMING.
JUDSON E. HARRISS.

Subscribed and sworn to before me this 25th day of August, A. D. 1922.

[SEAL.] H. H. BAUGHMAN,
County Clerk.

133 STATE OF ILLINOIS,
County of Randolph, ss:

On this 22 day of August, A. D. 1922, personally appeared before me James H. McGuire, County Collector of the County of Randolph, in the State of Illinois, and Logan F. Hachman, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and severally acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said James H. McGuire and Logan F. Hachman being respectively by me duly sworn says, each for himself and not one for the other, that he is a resident and householder of said County of Randolph and that he is worth the sum of $1,000.00 over and above his just debts and legal liabilities and property exempt from execution.

JAMES H. McGUIRE.
LOGAN F. HACHMAN.

Subscribed and sworn to before me this 22 day of August, A. D. 1922.

[SEAL.] CHAS. H. THIES,
County Clerk.

The above and foregoing bond is approved both as to sufficiency and form, this 1st day of Sept., A. D. 1922.

GEORGE W. ENGLISH,
United States Judge.

Endorsed: No. 1641. Illinois Southern Ry. Co. vs. W. Fish Wilson et al. Bond on appeal. Filed September 1, 1922. Arthur W. Charles, Clerk.

134 And afterwards on to-wit, the 9th day of September, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Præcipe for Record, which said Præcipe was and is in the words and figures following, to-wit:

135 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimmig, County Collector of Taxes of the County of Perry; James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

The Clerk will please prepare a complete transcript of record in the above entitled cause, for appeal to the Supreme Court, including therein the following, viz:

A copy of the original bill of complaint.

A copy of the subpœna and other process, and the returns endorsed thereon.

A copy of the restraining order.

A copy of the motion to dismiss, filed June 21, 1921, and the order of Court overruling said motion.

A copy of the preliminary injunction.
A copy of the answer of defendants.
A copy of the stipulation for reference to a special master.
A copy of the order of Reference to a Special Master.
A copy of the motion to set aside the order of reference for leave to withdraw answer, and to dismiss bill for want of equity, etc., filed May 1, 1922.

136 A copy of the order of the Court allowing motion to set aside order of reference, and granting leave to withdraw answer, and overruling motion to dismiss for want of equity.
A copy of the opinion of the Court.
A copy of the final decree of the Court.
A copy of the Petition for Appeal.
A copy of the assignment of Errors.
A copy of the order allowing appeal, and fixing bond on appeal.
A copy of the bond on appeal, and the approval of the Court on such bond.
A copy of this præcipe.
A copy of all other papers and pleadings, and of all proceedings in said cause.
The citation on appeal.
Certificate of Clerk, and transcript of record.

Respectfully submitted,

JUNE C. SMITH,
Solicitor for Defendants.

To Hon. Arthur W. Charles, Clerk of United States District Court of the Eastern District of Illinois:

Received a copy of the above præcipe for transcript of record this 6th day of September, A. D. 1922.

GEO. B. GILLESPIE,
Solicitor for Complainants.

Endorsement: 1641. Filed Sept. 9, 1922. Arthur W. Charles, Clerk.

137 And afterwards on to-wit, the 20th day of September, A. D. 1922, there was filed in the office of the Clerk of said Court, in said cause, Motion for an Extension of Time, which said Motion was and is in the words and figures following, to-wit:

138 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Now come the defendants in the above entitled cause and respectfully represent and show unto the court that, by orders heretofore duly entered of record in said cause, an appeal has been taken to the Supreme Court of the United States, and that an appeal bond has been filed and a citation duly issued herein by the Honorable George W. English, Judge of this Court, which said citation is returnable on September 25, A. D. 1922.

These defendants further show to the court that, by reason of the press of other official business, the Clerk of this Court has been and is unable to prepare a transcript of the record herein in time for such transcript to be filed and said appeal docketed on or before September 25, 1922, said date being the return day of the
139 citation heretofore issued in this cause; and that in order to give the Clerk of this Court ample time to prepare said transcript and in order to give these defendants sufficient time to file said transcript and docket said cause in the office of the Clerk of the Supreme Court of the United States, it will be necessary to enlarge the time for the return of said citation and the filing of said transcript and the docketing of said cause.

Wherefore, these defendants pray that the Honorable George W. English, Judge of the United States District Court for the Eastern District of Illinois, the Judge who signed said original citation, will grant an extension and enlargement of the time for the return of said citation and for the filing of said transcript and docketing of said cause in the office of the Clerk of the Supreme Court of the United States, and that said citation, heretofore issued in this cause on the 31st day of August A. D. 1922, may be extended and en-

larged so that it will be returnable on the 23rd day of October, A. D. 1922.

JUNE C. SMITH,
Solicitor for Defendants.

STATE OF ILLINOIS,
County of Marion, ss:

June C. Smith, of lawful age, being duly sworn, on oath deposes and says that he is the Solicitor for defendants, and that the facts stated in the above petition and motion are true.

JUNE C. SMITH.

Subscribed and sworn to before me this 18th day of September, A. D. 1922.

[SEAL.]

MYRTLE BRYAN,
Notary Public.

140 Endorsed: No. 1641, Motion for Extension of time. Filed September 20, 1922. Arthur W. Charles, Clerk.

141 And on the same day, to-wit, the 20th day of September, A. D. 1922, the following further proceedings were had in said Court, in said cause and entered of record, to-wit:

142 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois, Wednesday, September 20th, A. D. 1922.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

Now on this 20" day of September, A. D. 1922, this cause coming on to be heard on the motion and petition of defendants for extending and enlarging the time for the return of the citation herein,

And it appearing to the court that, on account of the press of other official business, the Clerk of this Court will not have time to prepare a transcript of the record herein so that the same may be filed and said appeal docketed in the office of the Clerk of the United States Supreme Court on or before the return day heretofore fixed by the citation issued in this cause,

And it further appearing to the court, that the time fixed for the return of said citation heretofore issued in this cause has not expired and will not expire until September 25, 1922, and the
143-145 court being sufficiently advised in the premises,

It is ordered, adjudged and decreed that the time for the return of the citation heretofore issued in this cause be extended and enlarged, and the time for filing the transcript of the record and docketing said cause in the office of the Clerk of the Supreme Court of the United States be and the same is hereby extended to October 23, A. D. 1922, and the said citation be and the same is hereby made returnable on the 23rd day of October, A. D. 1922, and the time for filing the transcript of the record in said cause and docketing said cause in the office of the Clerk of the Supreme Court of the United States be and the same is hereby extended to October 23rd, A. D. 1922, pursuant to Rule 9 of the Supreme Court of the United States.

Enter:

GEORGE W. ENGLISH,
District Judge.

146 UNITED STATES OF AMERICA,
Eastern District of Illinois, ss:

I, Arthur W. Charles, Clerk of the District Court of the United States for the Eastern District of Illinois, and Keeper of the Records and Seals thereof, do hereby certify the foregoing to be a true and correct transcript of the files and records in said Court and made in accordance with the Præcipe filed in the cause entitled: Illinois Southern Railway Company, et al. vs. W. Fish Wilson, County Collector of Taxes of the County of Marion, et al., In Equity, No. 1641, as fully as the same appears from the originals now on file and of record in my office.

And I further certify that the Citation, with the endorsements thereon, is the original Citation with endorsements in said cause.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 30th day of September A. D. 1922.

[Seal of the District Court United States, Eastern District of Illinois.]

ARTHUR W. CHARLES,
Clerk.

147 UNITED STATES OF AMERICA:

In the United States District Court, Eastern District of Illinois.

Equity. No. 1641.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and The Missouri and Illinois Railroad Company, Complainants,

vs.

W. FISH WILSON, County Collector of Taxes of the County of Marion; Richard Farrell, County Collector of Taxes of the County of Clinton; W. H. Porter, County Collector of Taxes of the County of Washington; James H. Thimming, County Collector of Taxes of the County of Perry, and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, Defendants.

Bill in Chancery.

To Illinois Southern Railway Company, William W. Wheelock, as Receiver of the property of the Illinois Southern Railway Company; William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company, complainants in the above-entitled cause:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 25 day of September, A. D. 1922, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the United States District Court for the Eastern District of Illinois, from an order and decree entered in said cause on the 7th day of July, A. D. 1922, and from the final decree signed, filed and entered on the 7th day of August, A. D. 1922, in that certain suit being in equity, No. 1641, wherein Illinois Southern Railway Company, William W. Wheelock, as Receiver of the
148 & 149 property of the Illinois Southern Railway Company, William T. Abbott, Trustee of the Bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company are complainants, and W. Fish Wilson, County Collector of Taxes of the County of Marion, Richard Farrell, County Collector of Taxes of the County of Clinton, W. H. Porter, County Collector of Taxes of the County of Washington, James H. Thimming, County Collector of Taxes of the County of Perry and James H. McGuire, County Collector of Taxes of the County of Randolph, in the State of Illinois, are defendants and appellants, to show cause, if any there be, why the decree rendered against the said defendants, as in said order allowing the appeal mentioned, should not be

corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable George W. English, United States District Judge for the Eastern District of Illinois, this 31st day of August, A. D. 1922, and of the Independence of the United States the one hundred forty-seventh.

GEORGE W. ENGLISH,
United States District Judge for the Eastern District of Illinois.

I accept service of above citation this 6" day of Sept., A. D. 1922.

GEO. B. GILLESPIE,
Solicitor for Complainants.

Filed September 9, 1922.
ARTHUR W. CHARLES,
Clerk.

150 [Endorsed:] 1641. Filed Sep. 9, 1922. Arthur W. Charles, Clerk.

Endorsed on cover: File No. 29,185. E. Illinois D. C. U. S. Term No. 635. W. Fish Wilson, county collector of taxes for the county of Marion; Richard Farrell, county collector of taxes for the county of Clinton, et al., appellants, vs. Illinois Southern Railway Company, William W. Wheeler, as receiver, etc., et al. Filed October 5th, 1922. File No. 29,185.

Office Supreme Court, U. S.
FILED
OCT 8 1923
WM. R. STANSBURY
CLERK

No. 131

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collecotr of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry; and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants,

v.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and THE MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF OF ARGUMENT IN SUPPORT.

GEO. E. GILLESPIE,
Attorney for Appellees.

CASES CITED.

	Page
Ansbrow v. United States, 159 U. S. 695; 40 L. ed. 310	17
Apapas v. United States, 233 U. S. 582	17
Blythe v. Hinckley, 143 U. S. 501	17
Cincinnati, Hamilton & Dayton R. Co. v. Thiebaud 177 U. S. 619; 44 L. ed. 913	13
Cornell v. Green, 163 U. S. 75; 41 L. ed. 76	11-18
3 Corpus Juris, p. 718, Sec. 618	14
5 Fed. Stat. Ann. 2nd Ed. 794	10
Guaranty Trust Company of N. Y. v. Metropolitan Street Railway Company 215 U. S. 585, 588; 54 L. ed. 339	13
Huguley Mfg. Co. v. Galeton Cotton Mills Co., 184 U. S. 295; 46 L. ed. 548	12
Itow v. United States, 233 U. S. 583-586; 58 L. ed. 1102	12
Louisville Trust Co. v. Knott, 191 U. S. 225; 48 L. ed 159	17
Morrisdale Coal Co. v. Pennsylvania R. R. Co., 183 Fed. 929	17
Smith v. McKay, 161 U. S. 355	17
Southern Pacific Co. v. Stewart, 145 U. S. 359	17
State of Ohio ex rel v. Swift Co., Nos. 2 and 3, U. S. Sup. Ct. Adv. Sheets, (Co-op.) p. 31	14
United States v. Larkin, 208 U. S. 333; 52 L. ed. 517	17
United States v. Swan (CCA) 65 Fed. 647	18

No. 131

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collecotr of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry; and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois. Appellants, v. ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and THE MISSOURI AND ILLINOIS RAILROAD COMPANY, Appellees.	Appeal from the District Court of the United States for the Eastern District of Illinois.

MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

And now comes the appellees and move the court to to dismiss the appeal herein or transfer the cause to the Circuit Court of Appeals for the Seventh Circuit of the

United States for want of jurisdiction or transfer and as causes and grounds for said motion submit the following:

(1) The motion to dismiss the bill finally ruled upon by the District Court for the Eastern District of Illinois raises but a single question, the sufficiency of the allegations of the bill to give a court of equity jurisdiction of the cause. The grounds stated therein are as follows:

> "It appears from the face of the bill of complaint filed herein the only alleged invalidity of the taxes sought to be enjoined by the decree of this court sonsists wholly (of) descriminatory over-valuation of the property of the complainant.
>
> "It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law and no grounds are stated in the bill of complaint that would justify a court of equity in taking jurisdiction of the matters therein charged and stated."
>
> (P. R. 78, R. 105.)

(2) The order of the court overruling the motion to dismiss shows upon its face that the only question presented to and considered by the court was whether the bill on its face states a case within the equitable jurisdiction of the United States courts. The order of the court overruling said motion is in the words following:

> "It is further ordered that the motion to dismiss the bill of complaint herein for want of equity

be and the same is hereby overruled and denied." (P. R. 80, R. 108.)

(3) The motion to set aside the order of reference and permit the appellant to present the motion which was finally ruled upon by the court and which ruling is the basis of this appeal only requested the consideration of the single question whether "grounds are stated in said bill of complaint that would justify a court of equity in taking jurisdiction of the matters therein charged and stated," and concludes with this prayer:

> "That the order of reference may be set aside, answer of the defendant withdrawn and leave to file this motion granted, and that upon a final hearing of this motion the same may be sustained and said bill of complaint dismissed for want of equity." (P. R. 78, R. 106.)

(4) In the brief filed by appellants they limit this court to the consideration of the single question whether there is equity on the face of the bill and admit that the jurisdiction of the United States District Court for the Eastern District of Illinois was sufficiently stated in the bill. On page 7 of their brief appears the following:

> "The only question arising on the record in this court is whether on the face of the bill appellees have an adequate remedy at law, and whether the facts alleged are sufficient to constitute the taking of property without due process of law or a denial of the equal protection of the law in violation of the due

process and equal protection clauses of the Fourteenth Amendment." (Appellant's brief, p. 7.)

But in discussing the case in their brief the question of federal jurisdiction is expressly waived and the argument limited to whether there is equity on the face of the bill in this statement:

> "First, there must be federal jurisdiction or a federal question. This requirement is met in all the cases (referring to the cases just previously discussed) **as well as in the case at bar** with the averments that the taxpayer is about to be deprived of his property without due process of law. It is not sufficient, however, that this one condition is found to exist, but it must also concur with the further condition and essential requirement that some ground must be stated for equitable relief." (Appellant's brief, 56.)

And, upon consideration hereof appellees pray that the appeal herein be dismissed for want of jurisdiction because no federal question is involved, or in the alternative that this cause may be transferred to the United States Circuit Court for the Seventh Circuit of the United States for determination of the questions presented by the record herein, and in support of this motion appellees submit the annexed brief and argument.

Geo. P. Gillespie

Attorney for Appellees.

STATEMENT.

After the preliminary injunction was granted herein a motion was filed to dissolve the injunction and dismiss the bill, which was considered by the Court on January 24, 1922, and on the consideration thereof it was practically conceded that the bill was in all respects sufficient. The motion did not question the jurisdiction of the Court as a Federal Court, nor suggest that no Federal question was involved. The motion was disposed of by the Court in these words:

> "Now this cause coming on for hearing on the motion to dissolve the temporary injunction heretofore granted and to dismiss the complainants' bill of complaint, the Court having heard solicitors for the respective parties, and being fully advised in the premises, overruled said motion, to which ruling of the Court the defendants, by their respective solicitors, then and there excepted, and the defendants were ruled to answer on or before the 20th day of February, 1922." (P. R. 62, R. 71.)

Afterwards, on the 20th day of February, 1922, the appellees filed their answer to the allegations of the bill in detail. (P. R. 62, R. 73-99.)

On the 12th of April, 1922, counsel for the respective parties entered into a stipulation agreeing to a reference of the cause to Mr. Henry Keefe, a court reporter, as

Special Master, to take and report the evidence to the Court without findings. (P. R. 75, R. 100.) On the same day Mr. Keefe was appointed and the cause was referred to him to take and report such testimony pursuant to the stipulation of counsel. On the first day of May, 1922, appellants filed their motion to set aside the reference, for leave to withdraw their answer and to review their motion to dismiss for want of equity and file their additional motion to dismiss said suit on the face of the bill upon the following grounds, namely, for want of equity on the face of the bill. (P. R. 78, R. 105.) On the 7th day of July, 1922, the Court granted this motion to the extent of setting aside the order of reference allowing the withdrawal of the answer and on the re-presentation of the motion to dismiss for want of equity, that was overruled and denied. (P. R. 79, R. 108-110.) Upon the overruling of the motion to dismiss for want of equity, appellants elected to stand by their bill and their motion to dismiss for want of equity, waived the right to answer the bill and refused to further plead or answer to the bill as required by the order of the Court. (P. R. 80, R. 109.) Subsequently on July 7, 1922, a decree *pro confesso* was rendered. (P. R. 81, R. 113-117.)

It, therefore, appears conclusively from this record that the only question presented for consideration to this Honorable Court is whether the bill states upon its face a cause within the equitable jurisdiction of the United

States Courts. The question whether the bill states upon its face a case within the jurisdiction of the United States District Court for the Eastern District of Illinois as a federal court was not raised, presented or considered by the Court. The motion to set aside the order of reference for leave to withdraw the answer and file a motion to dismiss for want of equity was elaborately argued, both orally and by printed briefs. The Court gave notice to counsel of his conclusions by written memorandum in the following language:

> "Two questions entered into the discussion and the consideration of this motion. First; does the bill of complaint state or show upon its face a case which gives the Federal Court jurisdiction?
>
> "Second: Does there appear upon the face of the bill of complaint a state of facts which would authorize or require the aid of equity?
>
> "The first of these questions is answered in the affirmative by counsel, both for the complainant and the defendants, as there is no room for doubt but that the Federal Court has jurisdiction of the subject matter here involved.
>
> "Upon the second question, after having carefully read authorities, briefs and arguments of counsel, and carefully considering the bill, the Court is of the opinion that there is ample showing made upon the face of the bill to justify and demand the intervention of equity.

"Therefore, it is the judgment of the Court that this motion should be denied.

"George W. English, Judge."

While it is our understanding that a copy of the memorandum was filed in the record, it appears not to have been included in the record prepared for this Court, but there will be no controversy between counsel in relation to the words of the Judge expressing his views concerning the questions submitted in argument.

In discussing the case in their brief, the question of federal jurisdiction is expressly waived and the argument limited to whether there is equity on the face of the bill in this statement:

> "First, there must be federal jurisdiction or a federal question. This requirement is met in all the cases (referring to the cases just previously discussed) **as well as in the case at bar** with the averments that the taxpayer is about to be deprived of his property without due process of law. It is not sufficient, however, that this one condition be found to exist, but it must also concur with the further condition and essential requirement that some ground must be stated for equitable relief." (Appellant's brief, 56.)

It has been frequently decided by this Court that where a federal question is not in fact controverted in the United States District Court, the appeal or writ of

error should be taken to or issue from the Circuit Court of Appeals, and not the Supreme Court of the United States.

It is also an established principle that whether such question was involved must be determined from the record, and not from the assignments of error. In other words, that an appellant or plaintiff in error cannot import a question into the record which does not appear therefrom to have been in fact considered and decided by the trial court.

BRIEF OF ARGUMENT.

Whether this appeal is properly brought to this Court depends upon a construction of Sec. 238 of the Judicial Code, which provides:

> "Appeals and writs of error may be taken from the district courts, including the United States District Court for Hawaii and the United States District Court for Porto Rico, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the Court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States. (36 Stat. L. 1157, as amended 38 Stat. L. 804.)
>
> 5 Fed. Stat. Ann., 2nd Ed., 794.

This statute has been construed by this Court many times and a leading case construing it is *Cornell* v. *Green*. That case covers every point involved here and establishes these propositions:

(1) A case cannot be brought to this Court unless a federal question is involved.

(2) A federal question will not be held to be involved where no construction or application of the federal constitution or a federal statute was either expressed by or asked of the District Court and no question of the jurisdiction of the Court is certified to this Court.

(3) The dismissal of a bill on demurrer for want of equity does not present a question which this Court will consider in the absence of a federal question upon the record.

(4) An assignment of errors cannot be availed of to import into a cause questions which the record does not show were raised in the court below and rulings asked thereon so as to give jurisdiction to the Supreme Court of the United States.

Cornell v. *Green*, 163 U. S., 75; 41 L. ed., 76.

Speaking of the general intention of the Judiciary Act with regard to a distribution of appellate jurisdiction of federal courts, this Court said:

> "The general intention of the act was to distribute the appellate jurisdiction and to permit an appeal to only one court. (*Robinson* v. *Caldwell*, 165 U. S., 359; 41 L. ed., 745.) In this case appellants did not attempt to take an appeal directly to this Court from the Circuit Court nor could they

have done so, since no question was so raised as to bring the case within either of the classes named in Section 5. (*Cornell* v. *Green*, 163 U. S., 75; 75 L. ed., 76.)"

Hugulay Mfg. Co. v. *Galeton Cotton Mills Co.*, 184 U. S., 295; 46 L. ed., 548.

The jurisdiction of the federal Supreme Court under the Judicial Code to review judgments of the District Court exists only when such question was actually raised in the trial court.

Itow v. *United States*, 233 U. S., 583, 586; 58 L. ed., 1102.

We have shown in the statement not only that no federal question was controverted under Section 5 of the Judiciary Act or Section 238 of the Judicial Code, and this Court has in no uncertain terms held that where such is the case no appeal lies from the United States District Court and no writ of error can issue out of this Court to review a judgment based upon such a record. The rule was stated and the cases in support thereof cited by Chief Justice Fuller, as follows:

"When our jurisdiction is invoked under Sec. 5, of the Judiciary Act of March 3, 1891 (2 Stat. at L. 8263, Chap. 517, on the ground that the case falls within the fourth, fifth or sixth of the classes of cases therein enumerated, it must appear that a title, right, privilege, or immunity was claimed under the Constitution, and a definite issue in respect to the possession of the right must be distinctly dedu-

cible from the record; or that the constitutionality of the particular law or the validity or construction of the particular treaty was necessarily and directly drawn in question; or that the Constitution or law of a state was distinctly claimed to be in contravention of the Constitution of the United States; and it is not sufficient that the point is raised in the assignment of errors. *Ansbro* v. *United States*, 159 U. S., 695, 40 L. Ed. 310, 16 Sup. Ct. Rep. 187; *Cornell* v. *Green*, 163 U. S. 75, 41 L. Ed. 76, Sup. Ct. Rep. 969; *Muse* v. *Arlington Hotel Co.*, 168 U. S. 430, 42 L. Ed. 531, 18 Sup. Ct. Rep. 109; *Miller* v. *Cornwall R. Co.*, 168 U. S. 131, 42 L. Ed. 409, 18 Sup. Ct. Rep. 34."

Cincinnati, Hamilton & Dayton R. Co. v. *Thiebaud*, 177 U. S. 619; 44 L. Ed., 913.

In the case of *Guaranty Trust Company of New York* v. *Metropolitan Street Railway Company, et al.*, No. 607, which was a similar case dismissed for want of jurisdiction this Court cited the cases to date.

Guaranty Trust Company of New York v. *Metropolitan Street Railway Company*, 215 U. S., 585, 588; 54 L. Ed., 339.

The consessions in the record that a federal question was involved in the trial court, and the admission of the brief of appellant, "First, there must be federal jurisdiction or a federal question. This requirement is met in all the cases (referring to the cases just previously discussed) as well as the case at bar with the averments that the taxpayer is about to be deprived of his property without due process of law," remove that question from

this record as one that can be considered on appeal and seem to establish our contention beyond controversy.

The record makes it clear that the position of appellants in the court below was of acquiescence and agreement that the United States District Court had jurisdiction of the subject matter by virtue of the allegations of the bill. They cannot now change their position and insist that the question of jurisdiction was in issue.

State of Ohio, ex rel. v. *Swift & Co.*, Nos. 2 and 3, U. S. Sup. Ct. Adv. Sheets, (Co-op.) p. 31.

> "One of the most important results of the rule that questions which are not raised in the court below cannot be raised in the Appellate Court is that a party cannot, when a cause is brought up for appellate review, assume an attitude inconsistent with that taken by him at the trial, and that the parties are restricted to the theory on which the cause was prosecuted or defined in the court below. Thus, when both parties act upon a particular theory of the cause of action they will not be permitted to depart therefrom when the case is brought up for appellate review. * * *"

3 C. J. p. 718, Sec. 618.

The jurisdictional allegations of the bill if controverted would have required the District Court to construe and apply the due process clause and the equal protection clause of the Fourtenth Amendment of the Constition of the United States to the subject matter of

the suit, but the allegations of the bill were, nevertheless, for the purpose of conferring jurisdiction on the United States District Court and necessary to that purpose. Without such allegations that Court would not have had jurisdiction. Those averments with respect to Section 238 of the Judicial Code prescribing the appellate jurisdiction of this Court may be regarded, therefore, in two aspects—first, as jurisdictional allegations and, secondly, as allegations asking construction and application by the District Court of the provisions of the Federal Constitution. Up to this point we have considered them only in the latter aspect and have shown that there was in fact no construction or application of the provision of the Constitution by the District Court. That on that subject as well as the subject of jurisdiction there was complete acquiescence and consent to the procedure through which that question was waived and it was practically agreed that the allegations of the bill were sufficient.

We now draw attention to the fact that as a question of jurisdiction the record does not show that such a question was raised and there is no certificate of the judge of the District Court in the record certifying to this Court a question of jurisdiction to be considered as required by Section 238 of the Judicial Code. The only recital in the record over the signature of the judge is a brief order

allowing an appeal fixing the appeal bond at one thousand ($1,000.00) dollars and approving the sureties for the appeal bond. (P. R. 90, R. 125.)

The word "jurisdiction" as used in Section 238 of the Judicial Code was defined by the Chief Justice of this Court in the case of *Mudsill Mining Company* v. *Swan*, 13 CCA., 77. It was said that jurisdiction as used in that paragraph is applicable to initial questions of the jurisdiction of the United States District Court and Circuit Courts whether in law or equity over the subject matter and parties and not to questions whether a court of equity or law is the proper forum for working out the rights properly within the particular federal jurisdiction for ajudication. This definition has been adhered to and applies to all cases in which that question is involved under this section of the Judicial Code. If a federal question is involved either directly or indirectly as a question which would confer jurisdiction and being in issue is passed upon, then the case might also go to this Court on appeal, or by writ of error without a certificate and when the case came under consideration the Court might or might not consider and decide the federal question if the case might be decided upon other issues involved. But, where the federal question is not presented under a certificate as one of jurisdiction and does not appear upon the record as a question in issue and presented to and decided by th eDistrict Court, there is

nothing for this Court to consider and the cause would in such case be wrongfully in this Court without power of the Court to consider any question presented by the record.

United States v. *Larkin*, 208 U. S. 333; 52 L. Ed., 517.
Louisville Trust Co. v. *Knott*, 191 U. S., 225; 48 L. ed., 159;
Blythe v. *Hinckley*, 143 U. S., 501;
Ansbrow v. *United States*, 159 U. S., 695; 40 L. ed., 310.

The case last above cited holds that a definite issue as to the possession of a right under the United States Constitution must be deducible from the record before a judgment of the court below can be reviewed by this Court on the ground of an error in the disposal of such claim by its decision, and that an assignment of errors cannot be availed of to import questions into the cause which the record does not show were raised in the court below and rulings thereon so as to give jurisdiction to this Court under the Act of March 3, 1891. And, that where the jurisdiction of the District Court was an issue a certificate of such question of jurisdiction to this Court for decision is necessary or the case is not properly here.

See also:

Morrisdale Coal Co. v. *Pennsylvania R. R. Co.*, 183 Fed., 929;
Apapas v. *United States*, 233 U. S., 582;
Smith v. *McKay*, 161 U. S., 355;
Southern Pacific Co. v. *Stewart*, 145 U. S., 359.

If the jurisdiction of the federal court is not put in issue it matters not that that question is presented by the pleadings, neither is it material that it is averred in the bill of complaint, but in fact not decided; or, if waived in the briefs of counsel that will take the question out of the record if a mere federal question, not preserved as one of jurisdiction.

United States v. *Swan*, (CCA) 65 Fed., 647;
Cornell v. *Green*, 163 U. S., 75; 41 L. ed., 76.

Under the practice which prevailed prior to the enactment of the amendment to the Judicial Code by adding 238a thereto, in relation to appeals and writs of error, of September 14, 1922, 42 Stat. L. 837, the appeal in this case would have to be dismissed. That statute, however, provides for the transfer of cases wrongfully brought to this Court to the court to which the appeal should have gone or from which writ of error should properly have issued. This statute was construed by this Court in the case of *Heitler* v. *United States*, 7 Sup. Adv. Ops. Feb. 1, 1923 (Co-op.), p. 215; and, as we construe the opinion of the Court, the order of this Court should now transfer the record of this case to the United States Circuit Court of Appeals for the Seventh Circuit, where the questions preserved in the record may be considered or the cause be otherwise disposed of according to the practice of that Court.

We might well have based this motion also upon the ground that the appeal is a frivolous one, but as we construe the opinion of this Court in the *Heitler case*, that question should properly be reserved and presented to the Circuit Court of Appeals after a transfer of the record to that Court.

Respectfully submitted,

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Attorney for Appellees.

Office Supreme Court, U. S.
FILED
OCT 15 1923
WM. R. STANSBURY

No. 131.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARREL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,
Appellants,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY, and the MISSOURI AND ILLINOIS RAILROAD COMPANY,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO CIRCUIT COURT OF APPEALS.

JUNE C. SMITH,
Attorney for Appellants.

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Main 1819, Central 919.

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INDEX.

	Page
Statement	1-3
Brief of the argument	4-15

Cases Cited.

Cosmopolitan Mining Company v. Walsh, 193 U. S. 460	4
Keokuk and Hamilton Bridge Co. v. Salm, 258 U. S. 122	9, 10, 13
Wells Fargo and Company v. Nevada, 248 U. S. 265	11

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Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO CIRCUIT COURT OF APPEALS.

STATEMENT.

The statement of counsel for appellees in his motion to dismiss or transfer to Circuit Court of Ap-

peals, as to the facts, is substantially correct. It is, however, erroneous as to the conclusions drawn as to the issues raised by the motion of appellants in the District Court to dismiss the bill for want of equity.

The grounds on which the motion to dismiss were based, as therein stated, are as follows:

> "It appears from the face of the bill of complaint filed herein that the only alleged invalidity of the taxes sought to be enjoined by the decree of this Court consist wholly of discriminatory overvaluation of the property of the complainants.
>
> "It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law, and that no grounds are stated in said bill of complaint that would justify a court of equity in taking jurisdiction of the matters therein charged and stated" (Rec., p. 78).

We think the issues raised by the motion to dismiss in the court below were correctly stated by us at page 10 of our original brief filed in this case, as follows:

> "Are the facts alleged in the bill sufficient to give a federal court equitable jurisdiction to enjoin the collection of the taxes in question on the ground that such collection would amount to a taking of the property of appellees without due process of law and constitute a denial of the equal

protection of the laws, and are the facts as stated in the bill sufficient to show that the taxpayer has no adequate remedy at law?''

We think the issues on the motion in the court below as stated by the counsel for appellees are entirely too narrow and circumscribed and that the record clearly presents to this Court, for review, the decision of the court below on a question involving the application of the Constitution of the United States, within the language of Section 238 of the Judicial Code.

BRIEF OF THE ARGUMENT.

It is a well-settled rule of law that the entire record furnishes the basis for determining whether the suit is one which involves the construction or application of the Constitution of the United States within the meaning of the Judiciary Act.

> Cosmopolitan Mining Company v. Walsh, 193 U. S. 460, 468.

In applying the rule there announced to the case at bar, an examination of the record discloses that the purpose of the bill was not to enjoin the making of an assessment or the extension of a tax, but to enjoin the appellants, as County Collectors, from applying to the County Courts of their respective counties for judgments confirming the taxes extended and an order for the sale of the property in satisfaction of such taxes. In other words, the theory of the bill is that, if application for judgment was made to the County Courts by the appellants for judgment sustaining the taxes and an order of sale, that these judgments would constitute a denial of due process of law. The material averment of the bill of complaint in this case is as follows:

> "Your orators further aver that in the proceedings aforesaid, and in the manner and form

aforesaid, the State of Illinois, by and through the action of its State Board of Equalization, State Tax Commission and other taxing officers, as aforesaid, is threatening to and will, unless said taxing officers are restrained by this Honorable Court, deny to your orators the equal protection of the Constitution and laws and take from them their property without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States'' (Rec., p. 46).

Hence, according to the bill, the threatened act sought to be enjoined was the application of appellants, as County Collectors, to the County Courts of their several counties for judgment and an order of sale of the property.

The prayer of the bill asks that appellants be enjoined from

> ''on the first day of the term of the County Court, in each of their several counties, at which judgment for taxes on delinquent lands and lots may be prayed, from reporting to the County Clerks and Clerks of the County Courts, of each of their several counties, any lands and lots or railroad property belonging to the complainants or either of them which was and is all or a part of the properties aforesaid lately owned or controlled by the said complainants, or either of them, and assessed to and taxed in the name of the Illinois Southern Railway Company, how-

ever described or known, and from including in any delinquent tax list for the year 1920, in any or either of said counties, on the first day of May, 1921, or at any other time, or asking or praying the County Court in either of said counties to render judgment against the said railroad property, lands and lots, or any of the complainants, or any or either of them for delinquent taxes for the years 1917 to 1920, inclusive" (Rec., p. 46).

The decree itself enjoins appellants as follows:

"It is, therefore, ordered, adjudged and decreed that the said defendants, and each of them, their deputies, agents, clerks, servants, assistants and attorneys, and all other persons operating or confederating with them or acting by, through or under their directions, be and they and each of them are commanded and restrained perpetually to refrain and absolutely desist from on the first day of any term of the County Court of their several and respective counties at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes, interests, penalties and costs for the years 1917, 1918, 1919 and 1920, from reporting to the County Clerks and Clerks of the County Courts, of their respective and several counties, any lands, lots or railroad property belonging to or assessed to or in the name of the Illinois Southern Railway Company or the Missouri and Illinois Rail-

road Company, for delinquent taxes, special assessments, interests, penalties or costs for any or either of the years 1917, 1918, 1919 and 1920, or from applying for or praying any judgment against the said Illinois Southern Railway Company or the Missouri and Illinois Railroad Company, or the property of either of them, for any delinquent taxes for the years aforesaid, and from bringing any suit or suits for the collection of said taxes, interests, penalties or costs for said years" (Rec., p. 85).

It appears from the bill as above pointed out that the bill was predicated upon the allegation that if appellants, as County Collectors of their several counties, pursued the process provided by the laws of Illinois for subjecting railroad property to the payment of taxes and procured a judgment and order of sale in the manner and according to the provisions of the statutes of Illinois, that this would constitute the taking of property of appellees without due process of law.

The prayer of the bill was that appellants, as such County Collectors, be enjoined from pursuing the remedies provided by the statutes of Illinois. The final decree conforms to this prayer.

The motion to dismiss was in the nature of a general demurrer. The effect of the motion was to say that, conceding all the facts to be true, as alleged in the bill, there was an adequate remedy at law

provided by the statutes of Illinois, which would afford to appellees a complete and adequate remedy for the wrongs complained of in the bill.

The issue presented by the motion, stated briefly, is whether the plaintiffs had an adequate remedy at law. The remedy at law which presents itself is the remedy provided by the statutes of the State of Illinois in the courts of that state. The question presented to the Court, therefore, on the motion was, Is that remedy adequate and complete?

A remedy to be adequate must also be complete. A remedy to be adequate must not only be complete, but it must be of such a remedy as is guaranteed by the Constitution and laws of the United States. A remedy to be adequate must conform to all the constitutional requirements, including the guaranty of due process of law.

The bill on its face confesses that there is a remedy provided by the statutes of Illinois, namely, the application for judgment and order of sale in a regularly organized and constituted tribunal of Illinois. The bill alleged that that remedy was inadequate, in that the judgment of that court would constitute the taking of property without due process of law. A remedy which does not satisfy the requirements of due process of law would not be an adequate remedy. Conversely, a remedy which satisfied the requirements of due process of law would, if complete, constitute

an adequate remedy and satisfy the requirements of the Constitution.

Viewed from any standpoint, therefore, the issue on the motion to dismiss, while briefly stated, was, "Is there an adequate remedy at law?" involved the further question as to whether the remedy suggested as being adequate satisfied the requirements of due process of law. In other words the determination of whether the remedy was adequate involved the application of the due-process clause of the Fourteenth Amendment.

The Court, upon the motion, took judicial notice of the statutes of Illinois and the method of procedure for the subjection of railroad property to the payment of taxes extended. An examination of those statutes disclosed to the Court, on consideration of the motion, that the remedy at law, as provided by the Illinois statutes, is, in form, adequate and complete. A proceeding in which all questions as to the amount and validity of the assessment could be completely determined.

> Keokuk and Hamilton Bridge Co. v. Salm, 258 U. S. 122.

But the bill alleged that this remedy was inadequate, and that if the appellees pursued that remedy it would result in the taking of their property without due process of law. The motion challenged that

allegation and raised the truth of its averments as an issue to be tried on the motion.

Hence it was necessary that the court below go further in passing upon the motion and determine whether or not that allegation of the bill was true and whether or not the remedy at law afforded by the statute of Illinois would satisfy the requirements of the due process clause of the Fourteenth Amendment. The determination of this question involved an application of that provision of the Federal Constitution to the facts alleged in the bill. The Court found, as he must, in order to reach the conclusion he did reach, that the remedy at law provided by the statutes of Illinois, was inadequate, because the judgment of the County Courts as alleged in the bill of complaint did not satisfy the guaranties of the due process clause of the Fourteenth Amendment.

It must be kept in mind that the only thing appellants were sought to be enjoined from doing by the averments of the bill was applying to the courts of Illinois for a judgment sustaining the tax and ordering the sale of the property on the ground that such application and judgment would deny to the appellees due process of law.

This Court, in Keokuk and Hamilton Bridge Company v. Salm, 258 U. S. 122, in disposing of a case

identical with the case at bar, uses the following language:

> "But the bill failed to show that plaintiff was being deprived of property without due process of law, or was being denied equal protection of the laws, or that there was any danger that it would be. The law of Illinois affords ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts."

Again, in Wells Fargo and Company v. Nevada, 248 U. S. 265, the Court say:

> "In Nevada the mode of enforcing a tax such as this is by judicial proceedings wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment sustaining the tax is payment enforced. This, as repeatedly has been held, satisfies the requirements of due process of law."

In order to entitle plaintiffs to the relief asked for in the bill of complaint they must show:

First. That some act has been threatened or is about to be consummated which will constitute a denial of due process of law, and

Second. That there is no court of law which affords a remedy against the threatened invasion of the constitutional right.

The motion to dismiss in this case challenges the sufficiencies of the bill in this respect. In order to constitute a denial of due process of law sufficient to warrant a court of equity in taking jurisdiction, the bill must show on its face not only some threatened act, but that there is no remedy in a court of law which will constitute due process of law. The decision of that issue is such that the court below, in passing upon the motion, must resort to an application of the due process clause of the Fourteenth Amendment.

The issue in this case, then, was, did the bill of complaint, on its face, show and state facts which will authorize a federal court of equity to enjoin the appellants from applying to the courts of Illinois for a judgment confirming the taxes in question and ordering a sale of the property on the ground that such judgment would constitute the taking of property without due process of law, in violation of the Fourteenth Amendment.

Unless the court below was of the opinion that the judicial proceedings provided by the statutes of Illinois, subjecting railroad property to the payment of taxes extended against them, constituted due process of law within the guaranties of the due process clause of the Fourteenth Amendment, that Court was compelled to overrule the motion. While, on the other hand, if that Court was of the opinion that

under the facts alleged in the bill there was a complete and adequate remedy at law in the courts of Illinois, which satisfied the requirements of due process of law, then the Court should have sustained the motion and dismissed the bill on the ground that the plaintiffs had a plain, adequate and complete remedy at law in the courts of Illinois. This decision involved the application of that provision of the Constitution.

The Court, in its decision on the motion to dismiss, as well as in the final decree, found that the plan and process provided by the statutes of Illinois for subjecting railroad property to the payment of taxes constituted a denial of due process of law within the meaning of the Fourteenth Amendment.

The case of Keokuk and Hamilton Bridge Company v. Salm, 258 U. S. 122, was a case exactly identical with the case at bar. The bill was filed by a taxpayer to enjoin the collection of taxes which was alleged were invalid for the same reasons as alleged in the bill of complaint in the case at bar. The defendant in the cited case was a county collector of taxes, occupying the same position as the appellants in this case. A motion was made in the District Court by the defendant to dismiss the bill on the ground that the plaintiff had a plain, adequate and complete remedy at law. The same identical grounds as alleged in the motion to dismiss in this case. In

the cited case the motion was sustained. The Court, in that case, in the application of the due process clause of the Fourteenth Amendment, found that the proceedings for the enforcement of taxes against property provided by the statutes of Illinois satisfied the due process clause. The motion was sustained and the suit dismissed. An appeal was taken direct to this court where the order and decree of the District Court was affirmed. The two cases are identical as to the issues, the only difference being, in the cited case, the motion to dismiss in the District Court was sustained, while in the case at bar the motion was overruled. In other words, the District Court, in the cited case in the application of the due process clause of the Fourteenth Amendment held that the proceedings provided by the statutes of Illinois satisfied the requirements of the due process clause of the Federal Constitution, and was affirmed by this Court on direct appeal. While in the case at bar the Court, in the application of the same provision of the Constitution, held that the same process and proceedings provided by the statutes of Illinois did not satisfy the due process clause of the Fourteenth Amendment.

We respectfully submit that the decision of the court below, in passing on the motion to dismiss the suit, involved the application of the Constitution of the United States.

The record discloses conclusively that the court below could not determine the adequacy of the remedy at law provided by the statutes of Illinois in the courts of that state without the consideration and application of the due process clause of the Federal Constitution to the case made by the allegations of the bill of complaint and the issues raised by the motion to dismiss.

We respectfully submit that the motion of appellees to dismiss the appeal or in the alternative to transfer the cause to the Circuit Court of Appeals for the Seventh Circuit should be denied.

June C. Smith

Attorney for Appellants.

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NO. 181

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1922.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and the MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS.

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INDEX.

	Page
Accounting, as ground for equity jurisdiction	6
Acts enjoined	28
Acts sought to be enjoined	24
Acts threatened	24
Adequate remedy at law	39, 45
Appeal from judgment of State Court	37
Application for judgment for sale in State Court	30
Assessment of railroad property	14
Assessment, notice of	43
Assignment of errors	8
Bill of complaint	20
Paragraph 8	57
Prayer for relief	21
Bill of complaint, Greene v. L. & I. R. Co	17
Case, statement of	1
Collection of taxes, process in Illinois	28
Collection of taxes, process in Kentucky	24
Comparison with Greene v. L. & I. R. Co	16, 40, 64
Comparison with Wells-Fargo Co. v. Nevada	41
Comparison with Raymond v. Chicago U. Traction Co	64
Complaint, bill of	20, 57
Contentions of appellants	11
Decree, final	26-28
Defenses in State Court of law	32
Due process of law	42
Errors assigned	8
Errors relied upon	10
Equity jurisdiction	56, 64
Final decree	26-28
Fraud as ground for equity jurisdiction	42, 63
Greene v. L. & I. R. Co	42

Illinois statutes cited, Chap. 120, Par. 56, Cahill's Rev. Statutes..... 31
Par. 107..... 14
Par. 114..... 44
Par. 115..... 45
Par. 150..... 47
Par. 154..... 29
Par. 155.....29, 48
Par. 190..... 30
Par. 200..... 32
Par. 209..... 34
Par. 210..... 37
Par. 269..... 29

Injunction discussed..... 28

Kentucky statutes cited—
Section 4049..... 25
Section 4077..... 24
Section 4078..... 24
Section 4079..... 24
Section 4083..... 24
Section 4084..... 25
Section 4091..... 25

Keokuk & Hamilton Bridge Co. v. Salm..... 42
Multiplicity of suits.....45, 68
Notice of assessment.....43-44
Personal property tax..... 29
Prayer for relief..... 21
Proceeding in County Court on application for judgment 32
Questions at issue..... 16
Railroad property tax..... 30
Raymond v. Chicago U. T. Co.....47, 49

Remedy at law in state courts..... 32
Section 267 of the Judicial Code..... 59
Specification of errors relied upon..... 8
State Board of Equalization..... 15
State Tax Commission..... 15
Statement of the case..... 1
Taxes, personal..... 29
Taxes, railroad..... 30
Threatened acts..... 22
Wells-Fargo & Co. v. Nevada..... 41

Cases Cited.

Alexander v. Mason, 125 Fed. 830..... 67
Allen v. Pullman's Palace Car Co., 139 U. S. 658.. 63
Bennett v. Butterworth, 11 How. 669..... 60
Binkert v. Wabash R. Co., 98 Ill. 205..... 30
Boise Artesian etc. Co. v. Boise City, 213 U. S. 276 .....61, 69
Cooper v. Corbin, 105 Ill. 224..... 30
Corpus Juris, Vol. 1, page 618..... 67
De Bevoise v. H. & T. C. Co., 67 N. J. Eq. 472.... 67
Equitable Life Assur. Soc. v. Brown, 213 U. S. 25 63
Fowle v. Lawrason's Exrs., 5 Pet. 495..... 67
Gaar, Scott & Co. v. Hurd, 92 Ill. 315..... 30
Greene v. L. & I. R. Co., 244 U. S. 499.....16, 17
Hale v. Allinson, 188 U. S. 56..... 68
Hill v. Figley, 23 Ill. 364..... 30
Ind. Mfg. Co. v. Koethe, 188 U. S. 681..... 63
Javierre v. Central Altagracia, 217 U. S. 502..... 63
Judicial Code..... 59
Keokuk & Hamilton Bridge Co. v. Salm, No. 130, Oct. Term, 1921.....6, 36, 46, 56
Loeber v. Leininger, 175 Ill. 484..... 30

Louisville Water Co. v. Commonwealth, 132 Ky. 311 26
People ex rel. v. Campbell, 204 Ill. App. 226..... 35
People ex rel. v. Keokuk & Ham. Bridge Co., 287 Ill. 246..... 36
People ex rel. v. Keokuk & Ham. Bridge Co., 295 Ill. 176..... 36
People ex rel. v. Mix, 106 Ill. 425..... 35
People ex rel. v. St. L. Merchants Bridge Co., 282 Ill. 408..... 36
Raymond v. Chicago U. T. Co., 207 U. S. 20.....47, 49, 51, 63
Rees v. Watertown, 19 Wall. 107..... 61
Robinson v. Campbell, 3 Wheat. 212..... 59
San. Dist. v. Young, 285 Ill. 351..... 36
Scott v. Neely, 140 U. S. 106..... 60
Singer Stewing Mach. Co. v. Benedict, 229 U. S. 481.....58, 62
So. Pac. Co. v. United States, 200 U. S. 241..... 63
United States v. Bitter Root Dev. Co., 200 U. S. 451.....63, 70
United States v. Howland, 4 Wheat. 108..... 59
Van Wyck v. Knevals, 106 U. S. 360..... 61
Wehrman v. Conklin, 155 U. S. 314..... 59
Wells-Fargo & Co. v. Nevada..... ....41, 42, 55

IN THE

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OCTOBER TERM, A. D. 1922.

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BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the District Court of the United States for the Eastern District of Illinois from an order and decree overruling a motion to dismiss the bill of complaint and from a final decree enjoining appellants, as county collectors of taxes, from applying to the county courts of their respective counties for a judgment for sale for certain taxes assessed

against the property owned by appellees, or some of them. The taxes involved aggregate approximately $115,000.00.

On the third day of June, A. D. 1921, the Illinois Southern Railway Company, a railroad corporation, organized under the laws of the State of Illinois, jointly with William W. Wheelock, as Receiver of the property of the Illinois Southern Railway Company, William T. Abbott, trustee of the bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company, filed their joint bill of complaint in the District Court of the United States for the Eastern District of Illinois against appellants, as county collectors of taxes of the five counties in the State of Illinois through which the line of railroad of said railway company extends.

The bill sought to enjoin appellants, as such county collectors, from collecting the general taxes extended against the property of the railway company for the years 1917, 1918, 1919 and 1920, by the legal processes provided by the statutes of the State of Illinois.

The bill alleged, as a basis for the relief sought, that during the above years the statutes of the State of Illinois required that all property within the state should be valued, for the purpose of assessment, at its full, fair cash value; that in the years 1917 and 1918 one-third, and in the years 1919 and 1920 one-half of the full fair cash value, when ascertained in

the manner provided by law, should be taken as the assessed value on which taxes should be extended.

The bill further alleged that in the years 1917 and 1918 the State Board of Equalization was the legally constituted body authorized to make the original valuation and assessment of railroad property for the purpose of taxation; that in the years 1919 and 1920, by statute then in force, the State Tax Commission was the lawful successor of the State Board of Equalization and as such was the legally constituted body authorized to make the original valuation and assessment of railroad property for taxation in those years.

It was further alleged that during said four years it was the duty of the State Board of Equalization and the State Tax Commission, in making the valuation and assessment of the property of the Illinois Southern Railway Company, to first ascertain the full fair cash value thereof, and, having found such full fair cash value, to then equalize such value by reducing it below the full fair cash value so found and fixed so as to obtain the same rate of valuation as that at which other property was valued and assessed by the local county assessing officers throughout the state.. That having found such full fair cash value, equalized and reduced in accordance with the above plan, to then take one-third of such valuation for the years 1917 and 1918 and one-half for the years 1919 and 1920 as the basis for the assessment.

It was further alleged in the bill that the local assessors throughout the state, in assessing property in the four years in question, first fixed the full fair cash value thereof and then arbitrarily reduced such fair cash value to less than 70 per cent thereof, and then in the years 1917 and 1918 took one-third and in the years 1919 and 1920 one-half of the 70 per cent of such full value, as the assessed value, as the basis for taxation.

It was then alleged that the State Board of Equalization for the years 1917 and 1918 fraudulently and unlawfully valued and assessed the property of the said Railway Company for the year 1917 at 5.82 times, and for the year 1918 5.93 times its full value, and that the said Tax Commission fraudulently and unlawfully valued and assessed such property at 5.42 and 3.67 times its full fair cash value for the years 1919 and 1920, respectively.

In other words, the grounds alleged as the basis for the relief asked was that property generally throughout the state was assessed at less than 70 per cent of its full fair cash value by the local assessors, and that the assessments on complainants' property for the years involved was many times its full fair cash value. That by reason of the alleged grossly excessive, discriminatory and fraudulent valuation the complainants were deprived of their prop-

erty without due process of law and were denied the equal protection of the law in violation of the Fourteenth Amendment.

It was further alleged, as a basis for relief, that the assessment so made was in violation of the section of the Constitution of the State of Illinois which provides "that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

There was no averment in the bill that the property in question was assessed at a higher rate than other railroad property, or higher than other property valued and assessed by the State Board of Equalization or the Tax Commission, but the alleged discrimination was based solely upon the assessment of property which was assessed by local assessors as compared with the valuation and assessment of property assessed by the State Board of Equalization and the Tax Commission.

There is no diversity of citizenship alleged and the sole grounds of federal jurisdiction is the alleged violation of the due process and equal protection clauses of the Fourteenth Amendment.

Upon the filing of the bill a temporary restraining order was granted and entered. This was followed by a temporary injunction.

The appellants appeared and filed their joint and several answer to the bill. The case was referred to

a Special Master to take and report the testimony to the Court.

While the suit was pending in this status and before any evidence was taken, the opinion in the case of **Keokuk & Hamilton Bridge Company v. Salm**, No. 130, October Term, 1921, was announced (not yet reported). The principles announced in that case seemed to be conclusive of the issues in this case, and thereupon appellants filed their motion to set aside the order of reference, for leave to withdraw their answer and to dismiss the suit for want of equity on the face of the bill, and upon the further ground that the bill showed on its face that the complainants had an adequate remedy at law.

The Court allowed the motion to set aside the order of reference, and that order was set aside. The Court also granted leave to withdraw the answer, and the answer was withdrawn. But the Court overruled and denied the motion to dismiss the suit. Appellants elected to stand by their motion to dismiss and refused to plead further. An order pro confesso was entered, which was followed by a final decree, pursuance to Equity Rule No. 17.

The grounds for dismissal, set up in the motion, were as follows:

> "It appears from the face of the bill of complaint filed herein that the only alleged invalid-

ity of the taxes sought to be enjoined by the decree of this Court consist wholly of discriminatory overvaluation of the property of the complainants.

It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law, and that no grounds are stated in said bill of complaint that would justify a court of equity in taking jurisdiction of the matters therein charged and stated" (Rec., p. 78).

Exceptions have been duly preserved to the overruling of the motion to dismiss the entry of the order pro confesso and the final decree. The appeal to this court has been perfected by all of the defendants in the court below.

The only question arising on the record in this court is whether on the face of the bill, appellees have an adequate remedy at law and whether the facts alleged are sufficient to constitute the taking of property without due process of law or a denial of the equal protection of the law, in violation of the due-process clause and the equal-protection clause of the Fourteenth Amendment.

Specification of Errors Relied Upon.

In the record, there are ten specifications or assignments of error, as follows:

I.

"That the United States District Court for the Eastern District of Illinois erred in overruling the motion to dismiss the bill of complaint herein for want of equity.

II.

That the United States District Court for the Eastern District of Illinois erred in not sustaining the motion of defendants to dismiss the bill of complaint herein for want of equity.

III.

That the United States District Court for the Eastern District of Illinois erred in finding and holding that the said bill of complaint was sufficient to give the Court jurisdiction to grant equitable relief.

IV.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that the allegations of the bill of complaint

herein were not sufficient to give the Court jurisdiction to grant equitable relief.

V.

That the United States District Court for the Eastern District of Illinois erred in refusing to dismiss the bill of complaint herein for want of equity.

VI.

That the United States District Court for the Eastern District of Illinois erred in holding that the bill of complaint herein was sufficient on its face to give the Court jurisdiction to grant equitable relief.

VII.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that under the allegations of the bill of complaint herein the complainants had an adequate remedy at law.

VIII.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that said bill of complaint was insufficient to give the Court jurisdiction to authorize the Court to grant relief either under the due-process clause or the equal-protection clause of the constitution.

IX.

That the United States District Court for the Eastern District of Illinois erred in refusing to dismiss said bill of complaint for want of equity and on the ground that the said bill shows on its face that the complainants had an adequate remedy at law.

X.

That the United States District Court for the Eastern District of Illinois erred in denying and overruling the motion to dismiss the bill of complaint herein for the reason that the same was not sufficient in law to give the Court jurisdiction or to entitle the complainants to equitable relief."

The several assignments of error, while couched in different language, all raise the one legal question, viz.: Are the facts alleged in the bill sufficient to give a federal court equitable jurisdiction to enjoin the collection of the taxes in question on the ground that such collection would amount to a taking of the property of appellees without due process of law and constitute a denial of the equal protection of the laws, and are the facts, as stated in the bill, sufficient to show that the taxpayer has no adequate remedy at law. Consequently, the one specification of error re-

lied upon in this court for reversal may be briefly stated as follows:

The error of the court below in overruling and denying the motion to dismiss the suit for want of equity appearing on the face of the bill, thereby holding that the facts alleged were sufficient to give a federal court of equity jurisdiction to enjoin the collection of taxes by the process of law, provided by location of the tax for the reason that the enforcement of the collection of taxes by the process of law, provided by the statute of the State of Illinois, would consttute the taking of property without due process of law and a denial of the equal protection of the law, and that the complainants have no adequate remedy at law.

Upon this one specification and legal proposition we rest the case in this court, and in support of this proposition we shall insist:

That the statutes of the State of Illinois provide a complete scheme of judicial procedure for the enforcement of the collection of taxes assessed against railroad property, and as a part of that scheme adequate judicial hearings are provided in which all questions concerning the validity of the tax may be litigated by the taxpayer in a court of law; that these hearings afford an adequate remedy at law for the correction of all errors and wrongful or fraudu-

lent acts of the assessing officers in valuing property for taxation.

Under the statutes of the State of Illinois, a collector cannot seize the property of a railroad company for the nonpayment of taxes, but before such property can be subjected to the payment of taxes the collector must apply to a judicial tribunal of the county in which the property is located for a judgment sustaining the tax, and only after such judgment is obtained can he proceed against the property.

This is a judicial proceeding wherein process issues and an opportunity is given to the taxpayer and all persons having any interest in the property to appear and have a full hearing in which all questions affecting the validity of the tax, including any alleged fraudulent and discriminatory overvaluation, may be fully litigated and determined.

Further, any person interested in the property may appeal from the judgment of that Court to the Supreme Court of the state, where the decision of the County Court on all questions of both law and fact may be reviewed. Only after a final judgment sustaining the tax is thus obtained can the collection of the tax be enforced by proceeding against the property.

It is our position that this furnishes all the protection guaranteed by the Fourteenth Amendment and

also affords a complete and adequate remedy at law. These remedies are open to all taxpayers and persons having any interest in the property, and there is no denial of the equal protection of the law.

There being no diversity of citizenship and the only ground on which jurisdiction of the federal court is based being the supposed violation of the due-process and equal-protection clauses of the Fourteenth Amendment, and the facts alleged in the bill showing clearly that the complainants did have a complete and adequate remedy at law, there was no jurisdiction in the court below and the motion to dismiss should have been sustained.

BRIEF OF ARGUMENT.

In the presentation of this case it becomes important to trace, as briefly as the facts will permit, the plan and process by which taxes on the property of railroad companies are levied and collected under the statutes of the State of Illinois.

Under the statutes of Illinois all railroad property, and the property of certain other corporations, is assessed by the State Tax Commission (prior to 1919 by the State Board of Equalization). All other property is assessed by local assessors, elected in each township in the several counties in the state.

Paragraph 107 of Chapter 120 of Cahill's Revised Statutes of Illinois, page 2881, under the heading of "Duties of Tax Commission," provides:

> "The Tax Commission shall * * *
>
> (5) "Assess the railroad property denominated 'Railroad Track' and 'Rolling Stock.'
>
> (6) "Assess and value, in the manner provided by law, the capital stock, including the franchise of all companies or associations, now or hereafter, incorporated under the laws of this state, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the publishing of newspapers, or for the improving and breeding of stock, or for the purpose of

banking, including any of such property as may have been omitted from assessment in any year or years, or which from defective descriptions has not paid any taxes for any year or years."

Prior to July 1, 1919, the same powers and duties were lodged with the State Board of Equalization, which was, on said date, abolished by statute and succeeded by the Tax Commission.

The taxes in controversy in this case were extended on assessments made by the State Board of Equalization in the years 1917 and 1918, and by the Tax Commission in the years 1919 and 1920 under subdivision five (5), supra, on railroad property, designated in the statute as "Railroad Track" and "Rolling Stock," owned by the Illinois Southern Railway Company in those years. There was no assessment in those years on franchise or capital stock under subdivision six (6), supra.

By virtue of the above statute the assessments in question, for the purpose of taxation, were made at the times and in the manner provided by law. There is no complaint that this was not done. In fact the validity and legality of every step taken, and every act of the assessing authorities, as well as the legality of the tax itself, except as to the amount, was recognized by appellees paying all the taxes extended on the assessments in question, before the bill herein

was filed, except the portion of such taxes which it was claimed was based upon the alleged overvaluation (Rec., pp. 43-46).

To again state the issues briefly, the averment in the bill upon which the claim for relief is based, is that the property of the Railway Company was assessed during the four years in question by the state assessing officers in excess of from 300 per cent to 500 per cent of its actual value, while other property throughout the state was assessed by the local township assessors at less than 70 per cent of its actual value.

The motion to dismiss admits the truth of this averment, and the case must be tried in this court with this admission in the record.

Admitting this allegation to be true, let us consider the legal effect of the alleged discriminatory overvaluation, with a view to determine the legal remedy of a taxpayer who finds himself in that situation.

It is apparent that the bill in this case was framed on the opinion in **Greene v. Louisville & Interurban Railroad Company, 244 U. S. 499.** If this case comes within the principles announced in the **Greene** case, supra, the motion to dismiss was properly overruled, and the order and decree of the lower court must be affirmed.

Before attempting to apply the rules announced in the **Greene** case to the facts averred in the bill, in the present case, it will be profitable to first analyze, somewhat in detail, the facts alleged in the **Greene** case. This will enable us to better determine just what this court held in that case.

In that case, as in the case now before the Court, a motion to dismiss was overruled by the court below. The motion in that case, as well as in the case at bar, was equivalent to a general demurrer to the bill. Its effect was to admit all the facts well pleaded.

In the **Greene** case, after alleging the discriminatory overvaluation claimed in substantially the same language as that used in the bill in this case, the complainant, by paragraph 9 of the bill, alleged as the grounds entitling it to equitable relief as follows:

> "The said Bosworth, Rhea and Crecelius threaten to, and unless immediately enjoined and restrained by this Court will (although they have not yet done so), certify to the county clerks of Jefferson, Shelby and Oldham counties the amounts claimed to be due to said counties and the taxing districts thereof by reason of the valuation aforesaid, which said Bosworth, Rhea and Crecelius have assumed to make as above stated, and the said county clerks will thereupon certify said assessments, respectively, to the tax collectors of said counties and the taxing districts

therein for collection, and said collecting officers will thereupon proceed to make collections and will institute unwarranted, vexatious and multitudinous suits, actions and proceedings at law against the plaintiff, and will from time to time institute and prosecute such suits, actions and proceedings, to the great annoyance and irreparable, injury, cost and damage of the plaintiff; and unless immediately enjoined and restrained by this court the said Bosworth or the said Likens will enter into the account with the said Treasurer of the State of Kentucky the amount of said taxes based upon the valuation aforesaid; and the said James Garnett as Attorney-General and M. M. Logan, Charles H. Morris and O. S. Hogan as assistants, and said Victor A. Bradley and said Wiley C. Marshall will institute civil or penal actions or procure indictments against the plaintiff, based upon its assumed or supposed delinquency in the payment of taxes claimed to be due upon the illegal and unauthorized assessment aforesaid, and will bring such actions or proceedings, or procure such indictments from day to day or from time to time with the purpose of forcing the plaintiff to pay the illegal and unjust demands asserted against it on behalf of said commonwealth, and said local taxing districts, based upon the aforesaid valuation, which said defendants have assumed to make as aforesaid, and the apportionment and certification thereof which will be made as aforesaid. The penalties for the alleged delinquency of the plaintiff under section 4091 of the Kentucky statutes are so ex-

treme and enormous as to render it inequitable and unjust to require plaintiff to defend all or any of such actions or proceedings, and, therefore, the plaintiff is without any adequate remedy at law for protecting its rights or presenting its defenses to said illegal claims made by defendants; its remedy is only in equity, and unless a preliminary injunction is issued herein and be made perpetual upon final hearing, great and irreparable injury will result to plaintiff which will be subjected to said numerous actions and prosecutions, whereby it will be stripped of its property without due process of law; and unless a temporary restraining order issues immediately the said defendants will make the certifications to the said county clerks and promptly proceed to collect the amount of such illegal assessment and will seize and otherwise appropriate the plaintiff's property, to the destruction thereof and the destruction of plaintiff's business of transportation. The unauthorized and illegal valuation aforesaid constitutes a cloud, and, as claimed by defendants, constitutes a lien upon the plaintiff's property in the Commonwealth of Kentucky, and unless the defendants are enjoined and restrained by this court numerous, repeated and vexatious suits will be instituted to enforce or foreclose such lien, claimed as aforesaid by defendants, in the endeavor to force payment of the aforesaid illegally claimed taxes, which will be asserted by the defendants and local officers to be due the commonwealth and said counties and taxing districts, to the great and irreparable injury and damage of the plaintiff."

The corresponding allegations in the case at bar are as follows:

> "Said defendants, and each of them, threaten to prosecute their several applications for judgments against the said property for the remaining illegal, unconstitutional and void taxes aforesaid, and to obtain and enforce judgment against the said railroad properties, and indirectly against these complainants, thereby taking their property and the property of the railway companies without due process of law, and denying to them the equal protection of the law in violation of the Fourteenth Amendment to the Federal Constitution by means and force of the proceedings aforesaid, and by force of the said unconstitutional, discriminatory and fraudulent assessments and illegal levies and extension of taxes aforesaid.
>
> "Your orators further aver that in the proceedings aforesaid, and in the manner and form aforesaid, the State of Illinois, by and through the action of its said Board of Equalization, State Tax Commission and other taxing officers as aforesaid, is threatening to, and will, unless said taxing officers are restrained by this Honorable Court, deny to your orators the equal protection of the Constitution and laws and take from them their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of the provisions of the Constitution of the State of Illinois requiring that every person and

corporation shall pay a property tax in proportion to the value of his, her or its property as aforesaid'' (Rec., p. 46).

The prayer of the bill in the present case, omitting the formal part, asks that an injunction be issued against appellants,

> ''commanding them, and each of them, and their deputies, agents, clerks, servants, assistants and attorneys to refrain and desist, on the first day of the term of the county court in each of their several counties at which judgment for taxes on delinquent lands and lots may be prayed, from reporting to the county clerks and clerks of county courts of each of said several counties any land and lots or railroad property belonging to the complainants, or either of them, which was and is all or a part of the properties aforesaid lately owned or controlled by the said complainants, or either of them, and assessed to and taxed in the name of the Illinois Southern Railway Company, however described or known, and from including in any delinquent tax list for the year 1920 in any or either of said counties on the 1st day of May, 1921, or at any other time, or asking or praying the county court in either of said counties to render judgment against the said railroad property, lands and lots, or any of the complainants, or any or either of them, for delinquent taxes for the years 1917 to 1920, inclusive'' (Rec., p. 46).

The language of the above quoted portion of the bill of complaint referring to the "taxing officers" is surplusage because no taxing officer is made a party to the suit and no relief is asked against anyone except the five county collectors of taxes who are named parties defendant to the bill.

In the **Greene** case this Court found it unnecessary to pass on the questions raised under the Fourteenth Amendment, but sustained the lower court upon the grounds claimed for equitable relief under the Constitution and laws of the State of Kentucky. While it does not specifically appear from the opinion in so many words, it is apparent that the equity jurisdiction was sustained solely because of the allegations contained in paragraph nine of the bill of complaint. It is elementary that unless the remedies at law are inadequate equity will not intervene. In the **Greene** case it was alleged that unless equitable relief, by injunction, was granted, the defendants would do the things alleged in paragraph nine of the bill, quoted above. This is the material averment in the **Greene** case, and the one which clearly distinguishes it from the case at bar.

In the present case the threatened acts sought to be enjoined, are set out in the bill as above quoted, and no other ground of equitable jurisdiction or equitable relief is attempted to be alleged in the bill.

There is no averment or claim that the county collectors could institute any suit, that they could seize the property, that they could prosecute the complainants, either civilly or criminally, for failure to pay the taxes, or that they could do anything which, in any way, could interfere with the property, or that could embarrass or injure the complainants in their possession, ownership, use and enjoyment of the property.

In the **Greene** case, it does not appear that in any of the threatened suits, actions, proceedings, indictments or prosecutions alleged in the bill, authorized by the laws of Kentucky, the taxpayer would have any right to defend against the alleged over-valuation, the validity of the tax, or the legality of the assessment, nor does it appear in that case that there was any tribunal or administrative body to which the taxpayer could apply for relief against the alleged over-valuation upon which the taxes there in question were based.

Indeed, the statutes of Kentucky make no provision for contesting the legality of the tax and no provision for a review of the finding of the Board of Valuation and Assessment or of any alleged over-valuation, either before a judicial or an administrative body. A brief reference to the statutes of that state will be enlightening in this connection.

Section 4077 of Carrol's Statutes of Kentucky, 1915, creates a Board of Valuation and Assessment, composed of the Auditor, Treasurer and Secretary of State.

The same section provides for a franchise tax to be paid to the state and local franchise taxes, based on the value of the franchise, to be paid to the county, city, town or taxing district, against all Public Service corporations doing business within the state. It was this franchise tax that was involved in the case of **Greene v. Louisville & I. R. Co., supra.**

Section 4078 provides, that each such corporation shall make an elaborate, detailed report and return to the Board of Valuation and Assessment, showing the value of its franchise.

Section 4079 authorizes the Board of Valuation and Assessment, created by **Section 4077,** to fix the value of such franchise for the purpose of taxation.

Section 4083 provides, that any corporation assessed may, within thirty days after it receives notice of the amount of the assessment, petition the Board of Valuation and Assessment to reduce the assessment so made by it. This section expressly provides, that at the expiration of thirty days, after notice of the assessment is given, the action of the board shall be final. No appeal or right of review is provided for

before either a judicial or an administrative body, other than the petition for reduction before the Board of Valuation and Assessment, which made the assessment.

Section 4084 provides, that at the expiration of the thirty days given, within which a petition for reduction may be filed, under section 4083, supra, that the value so fixed shall be certified to the several County Clerks and by them to the respective collecting officers of the several taxing districts.

Section 4049 provides, that the state tax assessed against any corporation, company or association under the statute in question, shall be due and payable thirty days after notice of the same has been given said corporation, company or association by the Auditor; and all county, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of said tax is given by the officer whose duty it is to collect the same. This refers only to the franchise tax.

Section 4091 provides, that every such corporation, company or association failing to pay its franchise taxes, after receiving thirty days notice thereof, shall be deemed delinquent and a penalty of 10 per cent on the amount of the tax shall attach and thereafter such tax shall bear interest at the rate of 10 per cent per annum.

It provides, further, that any such corporation, company or association failing to pay such taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined $50.00 for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin Circuit Court shall have jurisdiction.

The fine imposed by the above statute on a delinquent taxpayer is in addition to the penalty and must be recovered in a separate action.

> Louisville Water Co. v. Commonwealth, 132 Ky. 311.

In the case at bar, the situation is entirely different. It is alleged in the bill of complaint in this case that the County Collectors, unless enjoined, would apply to the County Courts of their respective counties for a judgment sustaining the tax and an order of sale. It further appears from the bill that under the statutes of Illinois the Collectors could do nothing more. This is what they were enjoined from doing.

Paragraph 4 of the final decree finds:

> "That all other taxes, interests, penalties and costs charged and extended against the property of the complainants for the years 1917, 1918,

1919 and 1920, in each of the several Counties of Marion, Clinton, Washington, Perry and Randolph, in the State of Illinois, are excessive, fraudulent and void, and were extended upon the assessments made by the Board of Equalization for the years 1917 and 1918, and by the Tax Commission of the State of Illinois for the years 1919 and 1920, in violation of the Fourteenth Amendment to the Constitution of the United States of America, in that in the assessment, levy and extension of said tax the complainants were denied the equal protection of the law by the State Board of Equalization and the taxing officers of the State of Illinois and the assessment levy and extension of said tax was, and is, an attempt to, and would take the property of the said complainants without due process of law" (Rec., p. 82).

By the final decree the appellants are enjoined as follows:

"from on the first day of any term of the County Court of their several and respective counties, at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes, interests, penalties and costs for the years 1917, 1918, 1919, 1920, from reporting to the County Clerks and clerks of the County Courts of their respective and several counties, any lands, lots or railroad property belonging to, or assessed to, or in the name of the Illinois Southern Railway

> Company, or the Missouri & Illinois Railroad Company for delinquent taxes, special assessments, interests, penalties or costs for any or either of the years 1917, 1918, 1919 and 1920, or from applying for or praying any judgment against the said Illinois Southern Railway Company or the Missouri & Illinois Railroad Company, or the property of either of them for any delinquent taxes for the years aforesaid, and from bringing any suit or suits for the collection of said taxes, interests, penalties or costs for said years other than the sums already paid and accepted by said defendants for each of said counties" (Rec., p. 85).

The alleged threatened action of the defendants set up in the bill, and sought to be enjoined and finally enjoined, was the application by the several defendants to the county courts of their respective counties for a judgment sustaining the taxes, and for an order of sale, in order to subject the property to the payment of the taxes. This is the only relief asked, and the only relief granted.

It will be convenient at this point to digress and consider in this connection the process provided by the statutes of Illinois for subjecting railroad property to the payment of taxes extended against it.

After providing for the extension of taxes on the collector's books in each year on the assessments made by the proper authorities, the statute pro-

vides, by **Paragraphs 154 and 155 of Chapter 120, Cahill's Revised Statutes of Illinois, page 2889,** as follows:

> Par. 154. "To each town or district collector's book a warrant, under the hand of the county clerk and seal of his office, shall be annexed, commanding such town or district collector to collect from the several persons named in said town or district collector's books, the several sums of taxes therein charged opposite their respective names."
>
> Par. 155. "In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's books shall neglect or refuse to pay his **personal property tax** to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such town or district collector on or before the tenth day of March next ensuing."

Par. 269, Chap. 120, Cahill's Revised Statutes, page 2913, provides:

> "The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the collector."

The lien against the personal property of the tax-

payer is completed upon the delivery of the collector's book.

Gaar, Scott & Co. v. Hurd, 92 Ill. 315.

This lien is not confined to the property assessed, but extends to all of the personal property owned by the taxpayer on the date the books are delivered to the collector.

Hill v. Figley, 23 Ill. 364;
Binkert v. Wabash R. R. Co., 98 Ill. 205;
Loeber v. Leininger, 175 Ill. 484;
Cooper v. Corbin, 105 Ill. 224.

The above sections of the statute apply only to personal property tax and not to taxes extended against real estate or railroad property. These sections have nothing to do with taxes of the character here involved, and are only material for the purpose of the comparison hereinafter made with the case of **Raymond v. Chicago Union Traction Company.**

Paragraph 190 of the same chapter, page 2895, provides:

> "Each town or district collector at the time of returning his tax book to the county collector, shall make affidavit, to be entered upon such book and subscribed by the collector, that the taxes charged against each tract or lot, or assessment of personal property remaining due and un-

paid at the date of making such affidavit in each case where there does not appear in the proper column the amount of such taxes as having been paid to such collector, and the date of payments and the names of any person as having paid the same; which affidavit shall be prima facie evidence of the facts therein stated."

Taxes extended against railroad property, including both "railroad track" and "rolling stock" are returned delinquent and handled under **paragraph 190**, supra, the same as taxes extended on other real estate. This appears from the bill, and it is unnecessary to quote the statute or the decisions of the State Supreme Court in this respect, at length.

Paragraph 56 of the same chapter, page 2872, provides:

"The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the same manner provided by this act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and

> deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use."

Taxes extended against railroad property, including "railroad track" and "rolling stock," which are not paid, are returned as delinquent with other real estate under **paragraph** 190, supra, and are handled in the same manner.

After the delinquent lists of real estate and railroad property are prepared according to the foreging statute, the county collector is required to make application to the Court for judgment and an order of sale.

Paragraph 200 of the same chapter, page 2897, provides for publication of the delinquent list and notice to all persons interested in the property of the amount of the tax and the time and place when and where application will be made to the County Court for judgment.

That section is as follows:

> "At any time after the first day of April, next, after such delinquent taxes and special assess-

ments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots in a newspaper printed and published in his county, if any such there be, and if there be no such paper printed and published in his county, then in the nearest newspaper in this state to the county seat of such county. Said advertisement shall be once published at least three weeks previous to the term of the County Court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners, if known, the total amount due thereon, and the year or years for which the same are due. Said collector shall give notice that he will apply to the County Court at the ..... term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the ..... Monday next succeeding the day fixed by law for the commencement of such term of said County Court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the County Court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of lands

and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper. Provided, that in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this state separate advertisement may be made giving notice of an intended application for judgment and for an order of sale on account of delinquent special assessments at any time after the first day of August next after such special assessments shall have become delinquent, the procedure in such case to be in all other respects except as to the time of making advertisement, application for judgment and sale, the same as in the case of delinquent general taxes."

Paragraph 209 of the same chapter, page 2900, prescribes the proceedings in court on the application for judgment as follows:

Par. 209. "The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may

be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form * * *."

This is a judicial proceeding, and the advertisement or notice required to be published under **Paragraph 200, supra**, is the process or summons to all persons interested in the property to appear in the County Court at the time and place fixed in the notice and make any defense which they have to the validity of the tax or the legality of the proceeding.

People v. Mix, 106 Ill. 425, 428.

The delinquent list of property on which taxes have not been paid stands as the declaration, and the published notice under **Paragraph 200, supra**, is the summons or process.

People ex rel. v. Campbell, 204 Ill. App. 226.

This proceeding in the County Court is a civil suit for the collection of a debt.

People ex rel. v. St. Louis Merchants Bridge Co., 282 Ill. 408.

In the proceeding in the County Court under the sections above quoted, upon application by the collector for judgment, the owner or any person interested in the property may appear and defend on any legal ground; among others, that the assessment was deliberately or fraudulently discriminatory, and hence the tax is void.

Keokuk & Hamilton Bridge Co. v. Salm, No. 130, Oct. Term, 1921, U. S. Sup. Court;
People ex rel. v. Keokuk & Hamilton Bridge Co., 287 Ill. 246;
People ex rel. v. Keokuk & Hamilton Bridge Co., 295 Ill. 176.

From the judgment of the County Court on the objections filed by any person interested in the property an appeal may be taken to the Supreme Court of the state, where all questions of law and fact may be reviewed.

Sanitary District v. Young, 285 Ill. 351.

This appeal is provided for by **paragraph 210** of the same chapter, page **2901**, which reads as follows:

"Par. 210. Appeals from the judgment of the court may be taken during the same term to the supreme court on the party praying an appeal executing a bond to the People of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment and cost which may finally be adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas unless the party praying such appeal or desiring such a writ of error shall, before taking such appeal or suing out such writ of error, deposit with the county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal or suing out a writ of error the judgment shall be affirmed in whole or in part the supreme court shall enter judgment for the amount of the taxes with damages, not to exceed 10 per cent, and order that the amount deposited with the collector, as aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered and execution issue for the balance of said judgment, damages and costs. The clerk of the su-

preme court shall transmit to said county collector a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court and to account for the same as collected taxes. If the judgment of the county court shall be reversed and the cause remanded for a rehearing, and if, upon the rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, or a writ of error prosecuted with supersedeas issued thereon, as herein provided, the clerk of the county court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him as aforesaid, and the county clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an additional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or rep-

resentatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made."

We have reviewed the above statutes of Illinois and set them out in this connection for the purpose of showing that the **Greene** case, supra, presented to this Court an entirely different set of facts, to which the principles of law therein announced were applied, from the facts in the case at bar.

It is clearly apparent from the opinion in the **Greene** case, supplemented by a reference to paragraph 9 of the bill of complaint in that case, which we have quoted above, that the property owner under the laws of Kentucky had no remedy save in a court of equity.

The bill in this case, however, presents no such state of facts. The only thing the collectors could do, under the statutes of Illinois, was to apply to the County Court for a judgment confirming the tax and an order of sale. This is what they are enjoined from doing by the final decree. Nothing else. They could not seize the property, nor in any way interfere with it had no injunction been granted. Indeed, the bill shows on its face that in each of the years 1917, 1918, 1919 and 1920 the taxes were not paid, and were returned delinquent (Rec., p. 39); that the

only thing appellants did was to apply to the County Courts of their several counties for judgment under the statutes. In each of those years a judgment for sale had been entered by the County Courts according to the allegations of the bill. According to the bill the property had been offered for sale in each year and not sold for want of bidders (Rec., p. 42). The property had not been, nor could it be seized, or in any way interfered with. The bill shows no act had been done, or, under the statute of Illinois, could be done, which would warrant relief in equity.

In view of the many decisions of this Court on the identical question there can be no claim that anything the appellants, as collectors of taxes for the several counties, could possibly do, under the statutes of Illinois, would amount to a taking of property without due process of law.

The only thing alleged by the bill to be threatened, or even apprehended, was that appellants would, in compliance with the laws of the state, apply to a regularly organized court of the state, in a judicial proceeding provided by law, for a judgment against the property. The statutes creating that tribunal, and providing that method of procedure, also provide for notice to the taxpayer, and all persons interested in the property have an opportunity to appear and defend. This is the anticipated act which appellees have been enjoined from doing.

This is clearly not sufficient, and it has been repeatedly so held by this Court.

In the case of **Wells Fargo & Company v. State of Nevada, 248 U. S. 165,** substantially the same facts were presented to this Court.

Under the statutes of Nevada the method of subjecting property to the payment of taxes was substantially identical with the system in force in Illinois with reference to taxes against real estate and railroad property.

In that case it was sought to enjoin the collection of the tax under the due-process clause of the Fourteenth Amendment. In disposing of that contention the Court say, reading from page 168 of the opinion:

> "A want of due process of law, in the sense of the Fourteenth Amendment, is asserted because the valuation by the State Board was made without notice to the company or according it an opportunity to be heard. Assuming that the premises is correct (as to which the record is not entirely clear), we are unable to accept the conclusion. In Nevada the mode of enforcing a tax such as this is by judicial proceeding wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment sustaining the tax is payment enforced. This, as repeatedly has been held, satisfies the requirements of due process of law.

(Hagar v. Reclamation District, 111 U. S. 701; Winona & St. Paul Land Co. v. Minnesota, 159 U. S. 526; Gallup v. Schmidt, 183 U. S. 300.)"

The above case would seem to settle all claims of appellees in this case, based on the due-process clause, beyond all controversy.

That appellees are not entitled to equitable relief in the present case, upon any other ground, is equally clear, and well settled by other recent decisions of this Court.

In the late case of the Keokuk & Hamilton Bridge Company v. Salm, No. 130 October Term, 1921, this court passed upon a case which is identical in point of fact, and which also arose under the same statutes of Illinois. In the cited case it was claimed that the property was deliberately and fraudulently assessed at 150 per cent of its value, while the property of other persons and corporations throughout the state was assessed at only 40 per cent of its value. The District Court sustained the motion to dismiss the bill on the ground that complainant had a plain, adequate and complete remedy at law. That action of the District Court was affirmed by this Court.

In disposing of the case this Court uses the following language:

"But the bill failed to show that plaintiff was being deprived of property without due process

of law, or was being denied equal protection of the laws, or that there was any danger that it would be. (Compare Wells, F. & Co. v. Nevada, 248 U. S. 165, 168, 63 L. ed. 190, 192, 39 Sup. Ct. Rep. 62.) The law of Illinois affords ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts.

"The provisions relating to the assessment and taxation of real estate apply to the assessment and taxation of bridge structures like that of the appellant (Hurd's Rev. Stat. [Ill.] 1919, Chap. 120, Par. 354). Every such assessment made by the County Assessors is subject to revision by them (Sections 319, 320).

"Moreover, upon complaint in writing that an assessment is incorrect, a board of review is required to give a hearing, and to correct the assessment 'as shall appear to be just' (Section 329; Standard Oil Co. v. Magee, 191 Ill. 84, 60 N. E. 802)."

Although the assessment in the cited case was made by the local assessor, and this Court in its opinion only pointed out the methods provided for the review of assessments, so made by applying to certain administrative tribunals, the laws of Illinois also clothe the taxpayer, whose property is assessed by the Tax Commission, with the same safeguard as those whose property is assessed by the local assessors.

But this is not material—it is unimportant how, or by whom, the assessment is made. The fact remains that before the property can be seized or subjected to payment of the tax assessed against it the Collector must resort to a judicial tribunal, where a full hearing is afforded, and obtain a judgment confirming the tax and an order of sale.

Paragraph 114 of Chapter 120, supra, also provides for publication of the assessment as made by the State Tax Commission for the purpose of giving property owners notice of the amount of the assessment. That section is as follows:

> "Upon the completion of the original assessments to be made by the Tax Commission it shall publish a full and complete list of such assessments in the state 'official newspaper.' Any person or corporation feeling aggrieved by any such assessment may, within ten days of the date of publication of such 'official newspaper' containing such list, apply to the Tax Commission for a review and correction of the assessment complained of. Upon such review the Tax Commission may make such correction, if any, therein as may be just and right."

Paragraph 115 of the same chapter then provides

for an appeal from the Tax Commission to the Circuit Court of the proper county, in the following language:

> "Par. 115. Any person feeling himself aggrieved by an assessment made by the Tax Commission may appeal to the Circuit Court of the county in which such property or some part thereof is situated, for the purpose of having the lawfulness of such assessment inquired into and determined.
>
> "The person taking such appeal shall file with the Tax Commission written notice of such appeal, which notice shall state in full the grounds of such appeal. Such notice of appeal shall be filed within ten days after such assessment is made and notice given thereof. Thereupon the Tax Commission shall prepare and transmit to the clerk of the court to which such appeal is taken a copy of such notice of appeal and a copy of all evidence, documents, papers, books and files pertaining to such appeal, which copies shall be certified to as correct by the Director of Finance. The appeal shall be heard without formal pleadings upon the record so certified by the Tax Commission. Appeals shall lie from the judgment of the Circuit Court to the Supreme Court. The remedy by appeal herein provided for shall not be construed to be exclusive."

Under the above statutes appellees had notice of the assessment by the official publication provided for in paragraph 114. Then they had the right, under the same statute, to apply to the Tax Commission to re-

view and reduce the assessment, and, failing in this, they still had the right to appeal to the Circuit Court of any county in which any of the property was located. It does not appear that they pursued either of those remedies. Failing in, or failing to pursue these remedies, the taxpayer and all persons interested in the property still were protected from an illegal sale or seizure of the property by the statute requiring the Collector to give notice before applying to the County Court for judgment, giving all persons an opportunity to be heard, in a proceeding in which all errors, or alleged errors, beginning with the original assessment, and down to the entry of judgment for sale, could be litigated and judicially determined. Any person interested in the property still had the right to appeal from that judgment to the Supreme Court of the state.

As this Court said in the case of **Keokuk & Hamilton Bridge Company v. Salm, supra:**

> "There is thus no basis for the contention that resort to a suit, such as this, was necessary to prevent either a sale for an illegal tax creating a cloud upon the title, or multiplicity of suits to recover back the tax, or other irreparable injury."

Under the **Wells Fargo Company case, supra**, and the **Keokuk & Hamilton Bridge Company case, supra,**

clearly no grounds for relief were alleged in the bill in this case, and the District Court erred in not sustaining the motion to dismiss the suit.

The case of **Raymond v. Chicago Union Traction Company, 207 U. S. 20,** was also relied upon in the court below by counsel for appellees as sustaining their position. But an examination of the **Raymond** case will show that it sustains our contention, and not the propositions of appellees.

In the first place the taxes involved in the **Raymond** case were personal taxes and not real property taxes. They were not in any sense railroad taxes levied upon railroad right of way or rolling stock. The tax was a personal tax extended against the owner of the property, and not against the property itself. The assessment on which it was based was on the value of the capital stock of the corporation, which was intangible personal property. The method of enforcing the payment of personal taxes is under **Paragraphs 150 and 155** of the above chapter of the Revenue Act. These sections read as follows:

> Par. 150. "To each collector's book a warrant, under the hand and official seal of the county clerk, shall be annexed, commanding the collector to collect from the several persons named in said book the several sums entered in the column of totals opposite their respective names. The warrant shall direct the collector to pay over

the several kinds of taxes that may be collected by him to the respective officers entitled thereto, less the compensation for collection allowed him by law."

Par. 155. "In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's book shall neglect or refuse to pay his personal property tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such town or district collector on or before the tenth day of March next ensuing."

It will be noted that **Paragraph 155, supra,** makes it the duty of the Collector to levy the warrant issued under **Paragraph 150, supra,** on **ANY** goods or chattels belonging to the person or corporation against whom the tax is assessed. This warrant is levied the same as an execution against personal property, and the property is sold under the warrant by the Collector, and no opportunity is given to the taxpayer or any person interested in any of the property levied on to make any defense whatever.

In other words, the personal taxes are assessed against the owner of the property, and when extended become the personal civil debts of such owner and are a lien against all his personal property under paragraph 269, chapter 120, supra, from the date the Collector's book is delivered to the Collector. If the

tax is not paid within the time fixed by law the Collector is required to immediately levy the warrant issued to him under paragraph 150, supra, on any personal property of the delinquent taxpayer, and sell the same. No resort to the courts is required of the Collector, as in case of real estate and railroad property tax. All the taxpayer can do to prevent a sale of personal property under the tax warrant is to either pay the tax or resort to a court of equity to enjoin the sale of his property under the tax warrant. Truly, he has no remedy at law, and none other save in a court of equity.

In the **Raymond** case the facts are stated on page 26 of the opinion by Mr. Justice Peckham as follows:

> "The total tax of the appellee on the second assessment amounted to about the sum of $1,000,000.00 more than the tax paid under the first assessment. It is the duty of the collector and the county treasurer to enforce the collection of these taxes, together with a penalty by reason of the delay in payment, and to that end levy the amount by distress and sale of the goods and chattels of the appellee, **and which cannot be prevented or defended by the appellee otherwise than by payment or by a bill in chancery.** The appellee's personal property consists chiefly of its cars and other personal property actually used in its business of transporting passengers, and the levy of said tax will greatly embarrass

it in its business, and also injure the public using its cars. After collecting the taxes it is the duty of the collector, and he is required by law, to pay over and distribute them in the proportions designated in the tax book to the City Treasurer of Cook County, the treasurer of the sanitary district, and other officers and authorities entitled to receive the same. In order to recover back the amount thus paid to the collector appellee will be obliged to bring separate suits against each one of the bodies receiving its proportionate share of said tax, necessitating a multiplicity of suits. Repayment of the amount which should be paid for the uses and purposes of the State of Illinois could not be enforced by any legal proceeding whatever, nor could payment be obtained from anyone which would cover the costs, including the commissions deducted for the recovery of the taxes; and if proceedings to collect the taxes were not enjoined great and irreparable injury would result to the appellee, for which there was no complete or adequate remedy at law. It was then alleged that to pay the enormous sum of over a million dollars, claimed as the tax for 1900, would render it impossible for the company to pay its rentals or preserve its leasehold interests, and would necessarily result in its insolvency.'

It clearly appears, therefore, that in the **Raymond** case only personal property tax was involved, and that it was clearly the duty of the tax collector to enforce payment of the tax by levying the collector's

warrant on the property and thereby subject it to the payment of the taxes extended. It further appears from the statement that the mere levying of the distress warrant would cause irreparable damages to the taxpayer, and, as the Court well said, to compel the taxpayer to pay the taxes and then bring suits to recover it back would involve a multiplicity of suits against the various taxing districts, resulting in enormous costs, and that that portion of the tax going to the state could not be recovered back in any proceeding, and further, that the payment of the amount, viz., over one million dollars, would render the taxpayer insolvent and compel it to cease doing business. A more disastrous situation could not be imagined than the one presented by the averments in the bill in the **Raymond** case, and as the Court well said, the taxpayer had no remedy to prevent the levy of the tax warrant and the sale of its property, except, either, by the payment of the tax itself, or by resorting to a court of equity.

It is apparent, also, that the opinion in the **Raymond** case did not overlook the principle that equity had no jurisdiction, if there were any remedies open to the taxpayer in a court at law. In speaking with reference to this proposition the Court, reading from page 39 of the opinion, say:

> "Finally it is objected that the appellee had a complete and adequate remedy at law by paying

the amount of the warrant and then suing the collector to recover the same back as money paid under duress, although upon a void warrant. Undoubtedly, if there be a complete and adequate remedy at law in such a case as this, the remedy in equity will not be recognized. Assuming the tax void, equity will not restrain, by injunction, its collection, unless there be some other ground for equitable interposition. * * *

"In the cases in 139 U. S., supra (Shelton v. Platt, 139 U. S. 591; Allen v. Pullman Palace Car Co., 193 U. S. 658), it was recognized that no ground appeared for the interposition of a court of equity, because of the existence of a statute in the State of Tennessee providing for paying the amount of the alleged illegal tax to the officer holding the warrant, and granting to the taxpayer a right to commence an action to recover back the tax thus paid, the statute providing that the officer should pay the amount received into the state treasury, where it was to remain until the question was decided, and, if it was decided in favor of the taxpayer, provision was made for the repayment of the amount by the state. The other averments, beside that of the illegality of the tax, made in the two cases, were paid not to constitute a ground for the interposition of a court of equity by restraining the collection of the tax. In the case of Pacific Express Co. v. Seibert, 142 U. S. 339, the Court held that there was no ground to warrant the interposition of a court of equity. The case was decided upon the ground that the averment of illegality of the tax was not sustained. There is no statute

of a similar kind in Illinois which has been called to our attention, but some of the cases in that state hold that such a suit may be maintained against the collector when the money was paid under protest.

"In the case at bar it is averred that it is the duty of the collector, having received the money on his warrant, to pay the sums so received in the proportions designated in his tax books to the city treasurer of the City of Chicago, the county treasurer of the County of Cook, the treasurer of the sanitary district and other officers and authorities entitled to receive the same, and if the plaintiff instituted to recover back the taxes so paid to the town or county collector he would be obliged to bring separate suits against each of the several taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the State of Illinois could not be collected back by any legal proceeding whatsoever; and if repayment could be compelled from the City of Chicago and other taxing bodies, such repayment would not cover the cost, including commissions deducted for the collection of the tax, and in that way it was averred that the appellee would be subjected to great and irreparable injury, for which there was not a competent or adequate remedy at law. There was also the allegation, already referred to in the foregoing statement, that, if compelled to pay this enormous tax, it would be rendered insolvent. We think these allegations combined take the case out of the class where relief is

> prayed for, founded simply upon the unconstitutionality of the law under which the tax is levied, or upon the illegality, for any other reason, of the tax itself, and bring the case within the jurisdiction of a court of equity. And in addition, there is the allegation that a levy upon the property of the appellee would interfere with the operation of the street car system in the city of Chicago, operated by the appellee, and would greatly embarrass and injure the public who have to use the cars.
>
> "Upon the whole we think it is apparent that no adequate remedy at law exists in this case."

It will be seen from the foregoing that the Court, in the opinion, did not overlook this important question, but gave it due consideration and upon all the facts averred found there was in fact no adequate remedy at law. This finding was based solely upon the fact that there was no legal proceedings required by statute intervening between the issuance of the tax collector's warrant and the levy of that warrant upon the property of the taxpayer and the sale of such property, thereby subjecting his property to the payment of the tax, whether legal or illegal. There was no legal method provided by which the levy of the warrant could be stayed, and the validity of the tax litigated, before the property of the taxpayer was interfered with, save in a court of equity. No such situation exists in the case at bar. If no bill

had been filed to enjoin the collection of the taxes in the case at bar, there is nothing the collectors could do, except return the taxes delinquent, give three weeks notice by publication of the delinquent list in a newspaper, together with a notice stating the time and place at which they would apply to the County Courts of the several counties for judgment for sale of the property for the payment of the taxes in question, at which time and place the taxpayer could appear and have a full and complete hearing upon every question presented as to the validity of the tax, including the question of the alleged fraudulent discriminatory overvaluation.

In the case of **Wells Fargo & Co. v. Nevada, 248 U. S. 165**, this identical proposition was also presented to the Supreme Court. In that case the Court say:

> "A want of due process of law in the sense of the Fourteenth Amendment is asserted because the valuation by the State Board was made without notice to the company, or according it an opportunity to be heard. Assuming that the premise is correct (as to which the record is not entirely clear), we are unable to accept the conclusion. In Nevada the mode of enforcing a tax such as this is by a judicial proceeding wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment

> sustaining the tax is payment enforced. This, as repeatedly has been held, satisfies the requirements of due process of law."

The same language can be applied to the case at bar. The mode of enforcing the tax involved in this suit is by applying to the County Courts of the several counties for judgment sustaining the tax and ordering sale of the property. Process by way of publication is provided, and only after there is a full hearing and a judgment sustaining the tax can the payment be enforced by a sale of the property, and as the Court say in the above case:

> "This, as has been repeatedly held, satisfies the requirements of due process of law."

It seems to us that nothing could be clearer than the distinction between the **Keokuk & Hamilton Bridge case** and the **Greene** and **Raymond** cases. This case is identical with the **Keokuk & Hamilton Bridge** case and is absolutely dissimilar to the **Greene** and **Raymond** cases.

It is laid down in all the cases in equity and in unmistakable language, that in order to enjoin the collection of a tax in the federal courts, two things must exist and concur in every case:

First. There must be federal jurisdiction or a federal question. This requirement is met in all of the

cases, as well as in the case at bar, with the averment that the taxpayer is about to be deprived of his property without due process of law. It is not sufficient, however, that this one condition is found to exist, but it must also concur with the further condition and essential requirement that some ground must be stated for equitable relief. In the **Raymond** case, the ground stated was that there was no remedy at law; that it was the duty of the collector to levy his warrant upon the property at once, and that unless enjoined he would do so; that if the taxes were paid, suits to recover back the money would be multitudinous as well as unavailing. It was further averred that the payment of the million dollars taxes in that case would render the taxpayer insolvent, would destroy its business and deprive it of its property without any opportunity to be heard in any judicial tribunal. In the **Greene** case a like condition existed, with like penalties and with like irreparable results.

But no such condition was shown to exist either in the **Keokuk & Hamilton Bridge** case or in the case at bar.

Without any regard to whether the taxpayer would have the right to appeal from the finding of the administrative board making the assessment or to have a judicial hearing on that question, this Court holds conclusively that where there is nothing the collector can do to enforce payment of the tax until he goes

to the County Court and obtains a judgment, and where the statute, as our statute provides, that on the application for such judgment the taxpayer shall be notified and have a full opportunity to be heard upon every question affecting the validity of the tax, that there is no equitable jurisdiction because the bill fails to show that the taxpayer is about to be deprived of his property without due process of law.

In this case, as well as in the **Keokuk & Hamilton Bridge** case, the only way the collector or any other officer of the State of Illinois, or any subdivision thereof could deprive the taxpayer of its property and subject that property to the payment of the taxes involved, would be to first procure a judgment for sale in the County Court. That being true, this affords the due process of law guaranteed by the Fourteenth Amendment, as clearly stated by this Court in the **Wells Fargo & Company case, supra.**

It matters not that the state courts of Illinois will grant equitable relief in certain cases where there is also a remedy at law. This rule does not prevail in the federal courts.

In the courts of the United States it is a guiding rule that a bill in equity does not lie in any case where a plain, adequate and complete remedy may be had at law.

Singer Sewing Machine Co. v. Benedict, 229 U. S. 481.

Moreover, the federal statutes expressly so provide:

> "Suits in equity shall not be sustained in any courts of the United States in any case where a plain, adequate and complete remedy at law may be had."

Sec. 267, Judicial Code.

The provisions of Section 267 of the Judicial Code are obligatory at all times and under all circumstances and are applicable to every form of action, the laws and decisions of the several states notwithstanding.

Wehrman v. Conklin, 155 U. S., 314, 323.

Equity jurisdiction of the federal courts does not depend on the manner or extent of such jurisdiction exercised by the state courts, but only what was a proper subject or equitable relief in courts of equity in England.

Robinson v. Campbell, 3 Wheat. 212;
U. S. v. Howland, 4 Wheat. 108.

A rule established in the state courts respecting equity jurisdiction cannot be admitted to change the

doctrines of equity as recognized and applied in the federal courts.

Bennett v. Butterworth, 11 How. 669;
Scott v. Neely, 140 U. S. 106.

A notable application of the rule of the courts of the United States has been in cases where a demand has been made to enjoin the collection of taxes, or other impositions, made by state authority, upon the ground that they are illegal or unconstitutional. The decisions of the state courts in cases of this kind are in conflict, and we need not examine them. It is a mere matter of choice of convenient remedies for a state to permit its courts to enjoin the collection of a state tax because it is illegal or unconstitutional. Very different considerations arise where courts of a different, though paramount, sovereignty interpose in the same manner and for the same reasons. An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the fiscal operation of the state governments has caused it to refrain from so doing in all cases where the federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of state or municipal tax, or impositions, is not of itself, a ground for equitable relief

in the courts of the United States. In such case the aggrieved parties are left to their remedy at law when the remedy is as complete, practical and efficient as the remedy in equity.

Boise Artesian etc. Co. v. Boise City, 213 U. S. 276;
Singer Sewing Machine Co. v. Benedict, 229 U. S. 481.

Where the remedy at law is adequate in theory it deprives equity of jurisdiction, although it may be inadequate in its practical result. By inadequacy of remedy at law is meant, not that it fails to produce results, but that it is not fitted, or adapted, to the end in view.

Rees v. Watertown, 19 Wall. 107.

A remedy in equity is the alternative to the want of a remedy at law; hence, it is not enough to show that the plaintiff **may** not have, but it must appear that he **does** not have, a plain, adequate and complete remedy at law.

Van Wyck v. Knevals, 106 U. S. 360.

It will no doubt be contended on the other side that there was equity jurisdiction because the bill alleged that the assessments were "fraudulently" made, in

excess of the actual value of the property, but this Court has already considered that question. In the case of the **Singer Sewing Machine Company** v. **Benedict, 229 U. S. 481,** this Court say:

> "It is also said that there were special circumstances calling for equitable relief in that the act of the assessor in making the additional assessment without giving any notice of it was necessarily a fraud, an accident, or a mistake. No such claim was made in the bill, and even had it been, it would be unavailing, unless founded upon something more than the charge that no notice was given, and that the company had no property within the city and county, other than that returned by it. We say this, because the fraud, accident, or mistake which will justify equitable relief must be something more than what is fairly covered by the charge here made, for otherwise the well-settled rule that mere illegality of the tax affords no grounds for such relief would be a myth. There really could be no case in which the illegality could not be said, with equal propriety, to be the result of fraud, accident or mistake, for it always arises out of some deviation from law or duty."
>
> Singer Sewing Machine Co. v. Benedict, 229 U. S. 481, 487.

The objection to the jurisdiction of the federal court of equity, on the ground of an adequate remedy

at law, may be raised at any time, even on the hearing on appeal.

> Southern Pacific Co. v. United States, 200 U. S. 241.

In the federal courts relief will be denied in cases in equity where the remedy at law is plain, adequate and completed, even though the question was not raised by the defendants in their pleading, or suggested by the counsel in argument, because it is a question of jurisdiction and no admission of the parties can change the law, or give jurisdiction to a court in a case of which it has no jurisdiction.

> Allen v. Pullman's Palace Car Co., 139 U. S. 658;
> Indiana Mfg. Co. v. Koethe, 188 U. S. 681;
> Raymond v. Chi. Union Trac. Co., 107 U. S. 20;
> Javierre v. Central Altagracia, 217 U. S. 502.

Equity does not take jurisdiction of cases of fraud where the relief properly obtainable on that ground can be obtained in a court of law.

> Equitable Life Assurance Society v. Brown, 213 U. S. 25, 50;
> United States v. Bitter Root Development Co., 200 U. S. 451.

By the averments in paragraph 8 of the bill of complaint in this case there is a futile attempt to bring the case within the opinion in the **Greene** and **Raymond** cases. We have already pointed out that this cannot possibly be done. In those cases the taxpayer had no other alternative except to pay the tax and bring a multiplicity of suits against numerous persons to recover back the taxes, which this Court pointed out would be unavailing for the reason that the portion of the tax going to the state, as well as the cost of collection, could not be recovered back in any form of action. The remedy at law, therefore, was wholly inadequate.

In the present case, however, the taxpayer is not forced to this alternative. In the case of railroad property taxes, which are here involved, he cannot be forced to pay until he is brought into the state court by proper process and given an ample opportunity to interpose every defense to the tax which is alleged in the bill of complaint in this case.

The statutes of Illinois give the owner of real estate or railroad property an opportunity to present every defense in a court of law before his property can be seized or subjected to the payment of the taxes under the lawful process of that court. Hence the allegations in paragraph 8 of the bill are pure surplusage and every averment of said paragraph 8 is disputed by other allegations in the bill itself, as well as by the

statutes of the State of Illinois and the decisions of this Court and the Supreme Court of the State of Illinois, above cited.

The allegations in that paragraph, that defendants would seize the property and that complainants would be compelled to pay the tax and bring suits to recover back the money, fall of their own weight when compared with other allegations of the bill and the plain provisions of the statutes of the State of Illinois.

Counsel on the other side will not contend nor make any claim that the things alleged in paragraph 8 could be done under the statutes of Illinois, nor will he contend that by any process permitted by the statutes of Illinois could the property in question be seized, except through a regular judicial proceeding, in which all defenses to the taxes could be made.

If the taxes in controversy were personal taxes then paragraph 8 of the bill would be entitled to respectful consideration, but the issues being confined solely to railroad property tax, paragraph 8 of the bill is as foreign to the issue and to the relief prayed for as the East is foreign to the West.

It is perfectly apparent that when **paragraph 8** of the bill was dictated the counsel who prepared the bill had before him the opinion in the Greene case; but this case must be determined by the laws of Illinois and not by the laws of Kentucky. The inclusion of the allegations of paragraph 8 in the bill only

shows that counsel fully recognized the rule which we have asserted, that relief in equity is only available where there is no adequate remedy at law.

Counsel for appellees made some contention in the court below that there was equitable jurisdiction because he claimed the suit was one for an accounting. We think he is too good a lawyer to make any such contention in this Court.

It is true appellees, in the prayer for relief, asked:

> "That upon a hearing hereof the court shall take full account and make findings of the value of the property aforesaid in each of the years 1917 to 1920, inclusive, for the purpose of taxation and determine the taxes equitably due to the said several taxing districts upon a legal assessment of said property, and upon determination thereof order and decree the full satisfaction of any tax remaining unpaid, and upon the payment thereof, perpetually enjoin and restrain the said defendants and their successors in office from collecting said unlawful taxes, interest, penalties and costs found to be in excess of that legally due to each of said defendants upon such an accounting" (Rec., p. 47).

Where it is sought to sustain the jurisdiction of a federal court of equity on the ground that the suit is one for an accounting, great complexity ought to exist in the accounts, or some difficulty at law should

interpose in order to induce a court of equity to exercise jurisdiction.

Fowle v. Lawrason's Exrs., 5 Pet. 495, 503.

Suits for accounting in equity are rarely sustainable on that ground alone. The right to an accounting, like discovery, is usually incidental to some other relief, and the equity jurisdiction is sustainable on some other recognized ground of equity jurisdiction.

It may be stated as an elementary proposition, as old as our system of jurisprudence, that if there is no discovery sought, and no fiduciary relation exists between the parties, equity has no jurisdiction for an action for accounting unless the accounts are mutual or complicated.

De Bevoise v. H. & T. Co., 67 N. J. Eq. 472;
1 Corpus Juris, p. 618.

Jurisdiction in equity of suits for accounting depend upon the inadequacy of the common-law remedy. Unless the bill discloses enough complexity to render the accounting in a court of law unduly burdensome and embarrassing a court of equity should refuse to take jurisdiction.

Alexander v. Mason, 125 Fed. 830.

In this case there is neither mutuality nor complexity of accounts. The accounting sought by the bill is purely incidental to other grounds relied upon for relief. No one will contend with any degree of sincerity that a suit to enjoin the collection of taxes, on the ground that such taxes are void, is a suit for accounting or that federal equity jurisdiction is sustainable on that ground.

Neither was there any ground of equitable jurisdiction because of a threatened multiplicity of suits.

In relation to the question of equitable jurisdiction on the ground of prevention of a multiplicity of suits, this Court, in Hale v. Allinson, 188 U. S. 56, on page 77 of the opinion, uses the following language:

> "Cases in sufficient number have been cited to show how divergent are the decisions on the question of jurisdiction. It is easy to say it rests upon the prevention of a multiplicity of suits, but to say whether a particular case comes within the principle is sometimes a much more difficult task. Each case, if not brought directly within the principle of some preceding case, must, as we think, be decided upon its own merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed

or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground, and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any. The single fact that a multiplicity of suits may be prevented by this assumption of jurisdiction is not enough in all cases to sustain it. It might be that the exercise of equitable jurisdiction on this ground, while preventing a formal multiplicity of suits, would nevertheless be attended with more and deeper inconvenience to the defendants than would be compensated for by the convenience of a single plaintiff; and where the case is not covered by any controlling precedent the inconvenience might constitute good ground for denying jurisdiction."

Again, in Boise Artesian Water Co. v. Boise City, 213 U. S. 276, this Court announces the rule that a court of equity ought not to interfere on the ground of danger of a multiplicity of suits by the same persons against the complainants for causes of action arising out of the same facts and legal principles unless it is clearly necessary to protect the complain-

ant against continuing and vexatious litigation and, on page 287 of the opinion, the Court say:

> "Here is a case where every possible defense to the collection of the license fee which has been suggested by the company is available to it in the action at law pending in courts of the State of Idaho, and there is no reason whatever shown why the law should not take its course. Presumably the company, on the ground of diversity of citizenship, might have removed the case from the state court to the Circuit Court of the United States, if the attempt had been seasonably made. If, however, the litigation continues up to the court of final resort of the State of Idaho, and all claims under the Constitution of the United States are seasonably and properly made in the state courts, and are denied, then the company would be entitled to a review by this court of the judgment of the state court."

The same rule is announced and discussed in United States v. Bitter Root Development Co., 200 U. S. 451, in the following language:

> "Nor do we see that there is any jurisdiction on the ground of prevention of a multiplicity of suits. Those persons who were guilty of the wrong must be made parties in either court, in order to bind them. Such alleged multiplicity is not avoided in one court more than in the other.

> It is not a case where a few defendants may be made parties as representatives of a class holding under or claiming the same title or right, and so that a judgment against the representative defendants may bind all others of the class. There is no class and there can be no representatives."

Clearly there is no jurisdiction in equity on any ground stated in the bill or upon any other ground that could be stated under the facts and under the statutes of the State of Illinois.

The final decree in this case, to our minds, presents a legal paradox without precedent in the annals of the jurisprudence of this country. We venture a guess that this is the first case on record where a litigant has sought or obtained a decree enjoining his adversary from instituting proceedings in a regularly organized and constituted court of law, on the ground that the judgment of that Court would amount to a denial of due process of law.

The term "due process of law" is defined to mean a course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights.

The decree enjoins the appellants from resorting to the "due process of law" provided by the laws of the State of Illinois, for the protection of the private rights of the owners of railroad property which is assessed for taxation. The decree presupposes that the judgment of the courts provided by the Constitution and laws of Illinois, in which the questions raised by the bill may be litigated, for the protection of the property owner, will amount to a denial of due process of law. In other words, the position of appellees, is, that the proceedings in the courts of the State of Illinois, which are legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights, will in itself constitute a denial of due process of law, hence, we say that the decree has no precedent and violates every principle found in our system of jurisprudence.

We respectfully submit that the decree of the District Court cannot be sustained on any principle of law or equity; that under the facts alleged in the bill and under the laws of Illinois, the appellees had a plain, adequate and complete remedy at law, and that the decree should be reversed and the cause re-

manded with directions to sustain the motion to dismiss the suit.

Respectfully submitted,

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WM. R. STANSBURY
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No. 131

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry; and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants,

v.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and THE MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLEES.

GEO. S. GILLESPIE,
Attorney for Appellees.

SUBJECT INDEX.

Page.

STATEMENT OF CASE 1
Answer filed February 20, 1923..... 3
Appellants Motion to set aside Order of Reference and dismissed for want of equity..... 3
Application for Restraining Order, June 3, 1921 2
Change of Counsel and Change of policy..... 5
Confusion of jurisdiction in equity and Federal jurisdiction 26
Constitutional method of assessment..... 28
Discrimination by Board as between its assessment and other property..... 13
Discrimination by State Board.....10-12
Distribution of Excessive values, how made..... 18
Effective of methods of Board and Commission and local assessors..... 15
Enforcement of Tax Collection, usual method.... 35
Established principles of assessment and taxation 36-39
Equalization, duties of Tax Commission and State Board.....29-30
Equitable jurisdiction only question considered in Court below..... 5
Excess tax and tax due and not due..... 22
Facts showing value of property..... 8
Hearing on Second Motion to Dismiss, July 7, 1922, denied 4
Illegal taxes 19
Jurisdictional Averments not questioned..... 3
Jurisdictional Averments of Bill admitted sufficient 25
Local property, how assessed by local assessors 14
Method of assessment by State Board..... 10
Method of collecting taxes from railroads..... 33

Page.
Misconstruction by Appellants of Bill, Prayer of Bill and Decree 5
Motion to Dissolve and Dismiss overruled, Jan. 24, 1922, ... 3
Motion for Preliminary Injunction, June 10, 1921 2
Motion to Dissolve preliminary Injunction and Dismiss, June 23, 1921 2
Multiplicity of Suits 20
No Certificate of Jurisdictional or Federal question asked or granted 4
Parties Complainant and Defendant 7
Railroad Tax Book 32
Real Estate of Railroads, how assessed 31
Reference to Special Master, April 12, 1922 3
Right of Way, how assessed 31
Rolling Stock, how assessed 31
Rolling Stock personal property 33
Schedules to be considered by Board and Commission 32
Specifications of Motion to dismiss 2
Specifications of Second Motion to Dismiss 4
Supervisors of Assessments 28-29
Tax Commission as successor to Board 34
Tax is on personal property 9
Taxes lien on personal property 36
Title to sue and liability of Complainants for Taxes 8
Violation of the Fourteenth Amendment 17

BILL OF COMPLAINT I TO IX 7-22
Equity jurisdiction, multiplicity of suits, etc. 20
Facts showing value, location and description of railroad property 9
Making parties defendant 8
Method of assessment by State Board and Tax Commission 10
Methods used by Board and Commission showing discrimination 13

Page.
Parties to Bill stated in margin..... 7
Statement of illegal taxes..... 19
Taxes due and not due..... 22
Title to sue and liability of complainants..... 8

Brief of Argument.
Actual Fraud not necessary..... 80
Allegations of Bill conferring Federal jurisdiction 44
Appellants' construction of Keokuk & Hamilton Bridge Case wrong.....106
Complicated accounting confers equity jurisdiction 89
Controlling fact departure from exercise of judgment 61
Discrimination 45
Equity jurisdiction only, now involved..... 74
Fraud gives equity jurisdiction..... 74
Fraud though no evil intent..... 82
Holmes opinion, reference to..... 62
Home Telephone Case discussed.....69
Inadequacy of remedies at law..... 90
Inadequacy of remedies under State laws not sufficient 101
Jurisdiction of Federal Courts..... 41
Justice White's answer to Appellant's contention 103
Louisville & Interurban Case discussed..... 70
Multiplicity of suits..... 83
Overvaluation 44
Percent. of overvaluation..... 47
Proceeding for delinquent taxes not a suit..... 98
Questions presented 40
Reply to arguments of Appellants..... 94
Returns verified 45
Vice of Appellants contention.....101
Writ of Certiorari, no remedy..... 62

APPENDIX OF TAX LAWS:

	Page.	Margin
Aggregate assessment reduced for equalization purposes	2	3
Auditor to lay schedules before Board.	5	13
Collector's books, how made	9	19
Duties of town and district collectors..	10	21
Equality provision of Constitution... .	1	1
Levies to collect taxes	11	23
Levy and collection personal tax	11	24
Lien when attaches to personal property	13	28
Other methods of enforcing collection.	11	25, 26, 27
Penalty for failure to schedule	5	12
Personal liability for failure to pay tax	13	30
Personal property liable for real tax..	13	29
Powers and duties Tax Commission...	6	15
Property other than railroad track and rolling stock, how listed	5	10
Railroad track assessment, how distributed	3	7
Railroad track, how listed	2	5
Railroad track, real estate	2	6
Rolling Stock, how listed	4	9
Rolling Stock, movable property, (Statute)	4	8
Rolling Stock, personal property, (Constitution)	1	1
Sworn lists of railroad property under oath	2	4
Tax Books, general	9	18
Tax Books, when delivered	10	20
Warrant for collecting railroad tax....	6	14

REVENUE SECTION CITED.

	Page.
Section 1, Article IX, Constitution	1
Section 10, Article XI, Constitution	2
Section 40	2

Page.

Section 41 5
Section 42 3
Section 43 3
Section 44 4
Section 45 4
Section 47 5
Section 48 5
Section 49 5
Section 50 5
Section 51 6
Section 105 2
Section 123 9
Sectoin 132 9
Section 135 10
Section 136 11
Section 137 11
Section 156 11
Section 161 11
Section 173 11
Section 183 12
Section 253 12
Sestion 254 13
Section 255 13
Section 230 14

TABLE OF CASES CITED.

(NOTE.—If miscitation found in text, will be corrected in this table.)

	Page
A. Backus, Jr., & Sons v. Fort Street Union Depot Co., 169 U. S., 557, 565; 42 L. ed., 853	59
Arrowsmith v. Gleason, 129 U. S., 86	101
Bordens Conds. Milk v. Baker, 177 Fed., 906; 101 CCA., 186	102
Bors v. Preston, 111 U. S., 258; 26 L. ed., 421	69
Calumet, Etc., Dock Co. v. O'Connell, 265 Ill., 110 ....51, 77,	86
Calumet, Etc., Dock Co. v. Stuckart, 275 Ill., 255 ....52, 77,	86
Carr v. Arnold, 239 Ill., 40	77
Chicago R. Co. v. Chicago, 166 U. S., 229; 41 L. ed., 979	53
Chicago Union Traction Co. v. State Board of Equalization, 114 Fed., 565 ....55, 57, 68,	86
C. B. & Q. R. Co. v. Bautsch, 129 Ill. App., 23	95
C. B. & Q. R. Co. v. Cole et al., 75 Ill., 591	76
C. V. & C. v. Mathews, 152 Ill., 153	99
City of Chicago v. Chicago City Ry., 222 Ill., 576	88
City of Chicago v. Collins, 175 Ill., 445	88
City Railway Co. v. Citizens Railroad Co., 166 U. S., 557	71
Cleghorn v. Postlewaite, 43 Ill., 428	76
Conyers v. Graham, 81 Ga., 615; 8 S. E., 521	82
I Corpus Juris, p. 619, sec. 64	93
Cunningham v. Macon & B. R. R. Co., 109 U. S., 446, 455	77
Davis v. Gray, 16 Wall., 220; 21 L. ed., 453	77
DuPage County v. Jenks, 65 Ill., 275	77
Ex. p. Virginia, 100 U. S., 339 55,	68
Fargo v. Hart, 193 U. S., 490, 502; 48 L. ed., 761	59
First National Bank v. Holmes, 246 Ill., 366	27
Gage v. Busse, 114 Ill., 589	98

	Page
Gage v. Lyons, 138 Ill., 594	98
Gage v. Nichols, 135 Ill., 134	98
Gage v. People, 188 Ill., 95	98
Gage v. Pumpelly, 115 U. S., 454	98
German Alliance Ins. Co. v. Van Cleave, 191 Ill., 410	88
Giozza v. Tiernan, 148 U. S., 657	54
Greene v. Louisville & I. R. Co., 244 U. S., 507 ....65, 70, 78, 80, 82, 86,	95
1 High on Injunctions, Sec. 494	76
Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S., 286; 57 L. ed., 504, 515 69,	106
Hovey v. Elliott, 167 U. S., 409 55,	68
I. C. R. R. Co. v. Hodges, 113 Ill., 323	77
Kansas Pacific v. Atchison R. R. Co., 112 U. S., 416; 28 L. ed., 795	69
Keokuk & Hamilton Bridge Co. v. Salm, 258 U. S., 126; 66 L. ed., 499	108
Kirby v. Ingersoll, Har., 172	82
Louisiana v. Jumel, 107 U. S., 758; 27 L. ed., 465	77
Louisville & Nashville, Etc., Ry. Co. v. Taylor, 86 Fed., 168-178	73
Louisville Trust Co. v. Stone, 107 Fed., 305 58,	73
Magnolia Bank v. Board of Supervisors of Pike Co., 111 Miss., 857; 3 A. L. R., 1265	66
Mississippi Mills v. Cohn, 150 U. S., 202	101
Moore v. School Trustee, 19 Ill., 82	82
McBroom v. Rives, 1 Stewart, 72	82
McGehee, Due Process of Law, p. 26	53
McGehee, Due Process of Law, p. 27 55,	68
National Surety Co. v. State Bank, 120 Fed., 593; 56 CCA., 656; 61 L. R. A., 394	101
North American Ins. Co. v. Yates, 214 Ill., 283	88
Odin Coal Co. v. Tadlock, 216 Ill., 624	95
Osborn v. U. S. Bank, 9 Wheat. (U. S.), 739, 822 ..69,	78
Pacific R. R. Co., Removal Cases, 115 U. S., 11-15; 29 L. ed., 323	70
Pennoyer v. McConnaughy, 140 U. S., 10-18; 35 L. ed., 362	78
Penn Mutual Ins. Co. v. Austin, 168 U. S., 685-695	72

Page

People v. Hibernian Bank, 245 Ill., 528.....77, 86
Peoples Gas Light and Coke Co. v. Stuckart, 286 Ill., 164 .....27, 51, 77, 86
I Pomeroy Equity Jurisprudence, p. 500, pars. 268-269 88
IV Pomeroy Equity Jurisprudence, sec. 2357..... 93
Raymond v. Chicago Union Traction Co., 207 U. S., 36; 52 L. ed., 87.....59, 60, 78, 79, 85
Reagan v. Farmers' Loan & T. Co., 154 U. S., 362, 390; 38 L. ed., 1014, 1021..... 59
Smith v. Reeves, 178 U. S., 436..... 101
Smyth v. Ames, 169 U. S., 466..... 101
I Story's Equity Jurisprudence, 10th Ed., Sec. 258-259 81
II Story's Equity Jurisprudence, 14th Ed., p. 8, Sec. 591 93
U. S. v. Old Settlers, 148 U. S., 469; 37 L. ed., 524... 70
West Chicago St. Ry. v. Krueger, 163 Ill., 586..... 95
Yick Wo v. Hopkins, 118 U. S., 356..... 54

No. 131

IN THE

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OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry; and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants,

v.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and THE MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The statement in the brief of counsel for appellants is so partial and incomplete that we feel constrained to

make an independent statement, rather than an attempt to supply its omissions.

This case comes here on a rather novel record. The bill was filed June 3, 1921. Due notice was given of an application for a temporary restraining order on June 3, 1921, and on June 3, 1921, a restraining order was entered. (P. R. 51, R. 50.) Thereafter, on the 10th day of June, 1921, a hearing was had upon a motion of complainants for a preliminary injunction, after due notice to and appearance by the defendants, and the same was granted on hearing. (P. R. 57, R. 60.) On June 23, 1921, defendants filed a motion to dissolve the preliminary injunction and dismiss the bill upon six specific grounds:

(1) Because of the insufficiency of the facts to constitute a cause of action in equity.

(2) Because there is an adequate remedy at law.

(3) Because the bill shows complainants guilty of laches.

(4) Because the bill shows property involved was sold and conveyed to the purchasers subject to tax liens.

(5) Because the allegations in the bill that certain adjustments in the receivers' accounts depend upon the amount of taxes legally due is a mere conclusion of the pleader.

(6) Material averments of the bill are mere conclusions and not statements of fact.

(7) The facts in the bill are not sufficient to entitle the complainants to equitable relief, either by a preliminary or permanent injunction.

(Note that federal jurisdiction was not questioned.)

Upon full hearing on January 24, 1922, said motion was denied and the defendants were ruled to answer the bill on the 20th day of February, 1922. (P. R. 62, Rec. 71.)

On February 20, the Defendants filed an answer denying in detail the material allegations of the Bill, except as to jurisdiction, which was admitted by filing the answer. (P. R. 62, R. 73.) And, on the 12th day of April, 1922, issue having been joined on Bill and Answer the cause was by stipulation and agreement referred to Henry Keefe, a special Master, to take and report the evidence to the Court without any findings on either law or facts. (P. R. 77, R. 103.)

It will be observed that up to this point the jurisdiction of the Court and the sufficiency of the jurisdictional averments of the Bill had not been questioned. On May 1, 1922, Appellants filed a motion to set aside the order of reference, for leave to withdraw their answer and renew their motion to dismiss and file an additional motion to dismiss for want of equity on the face of the Bill specifying the following grounds:

"It appears from the face of the bill of complaint filed herein that the only alleged invalidity of the taxes sought to be enjoined by the decree of this Court consist wholly in discriminatory over-valuation of the property of the complainants.

"It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law and that no grounds are stated in said bill of complaint that would justify a Court of Equity in taking jurisdiction of the matters therein charged and stated.

"Wherefore, the defendants respectfully pray that the order of reference may be set aside, the answer of defendants withdrawn and leave to file this motion granted, and that upon the final hearing of this motion the same be sustained and said bill of complaint be dismissed for want of equity."

(P. R. 78, R. 106.)

Hearing was had upon this motion on July 7, 1922. The order of reference was set aside, leave was granted to withdraw the answer and the same was withdrawn, and the Court ordered that the motion to dismiss the bill of complaint for want of equity be overruled and denied and exceptions were taken to that order. The defendants by their solicitors waived the right to answer, elected to stand by their motion "to dismiss for want of equity" and, thereupon, a default was taken and a decree rendered *pro confesso*. (P. R. 79, 81 R. 107-117.) No certificate was asked or granted showing that the Court passed upon any other questions than those enumerated, and the record does not show that any question was presented to the Court other than

whether the allegations of the Bill state a cause within the **equitable** jurisdiction of the United States District Court. We therefore submit that there is no jurisdiction in this Court to hear this appeal.

The question of equitable jurisdiction is the only question argued or passed upon by the United States District Court. It will be observed by an inspection of the record that during the preliminary steps of this case there was a change of counsel for the Defendants. The first motion to dismiss was filed by Edward J. Brundage, Attorney General, Thomas W. Williams, Assistant Attorney General, F. H. Kruger and Mallory L. Burrows, solicitors representing all of the Defendants, and by the State's Attorneys of each of the respective counties who represent the collectors, who are made parties defendant. The answer filed discloses that the Attorney General and Assistant Attorney General, Mr. Kruger and Mr. Burrows dropped and Mr. June C. Smith the first time appears as solicitor for the defendants associated with the several State's attorneys. When the motion to set aside the order of reference was filed Mr. June C. Smith first appeared as the exclusive representative of the defendants and the several State's attorneys as mere associates and from that point forward the record shows that Mr. Smith has had active charge of the case.

The change of policy upon a change of solicitors is very apparent from the record and shows that the views of Mr. Smith through the trial were that the one question involved is the question of whether there is **equitable jurisdiction,** as distinguished from a jurisdiction at law and by his motion to set aside reference, withdraw answer and reconsider on a motion to dismiss he expressly limited his contest of the allegations of the bill to the question of equitable jurisdiction. (P. R. 78, R. 106.) It follows that is the only issue presented and every other allegation of the bill is confessed as stated, and by the default is admitted to be sufficient because no other objection to the bill was raised or presented on the motions to dismiss. That includes not only the jurisdictional allegations of the bill, but all relevant statements of fact therein to establish want of due process of law and equal protection of the law in making assessments.

By comparing the actual averments of the bill with appellants' statement of fact, it will be seen that many of the material averments confessed are omitted from the statement and there is an entire misconstruction of the whole case before the Court resulting from the misapprehension of counsel as to what is in fact admitted by the motion to dismiss, the default and confession of the allegations of the bill. We assume this condition entirely warrants a statement of the relevant facts of the bill which, for convenience in referring to the same, follows

under the Roman numbered paragraphs of the bill commencing on printed record page 2.

In the margin of the bill, Illinois Southern Railway Company, William W. Wheelock, receiver of the property of the Illinois Southern Railway, William T. Abbott, trustee of the bondholders of the Illinois Southern Railway Company, and the Missouri and Illinois Railroad Company are made complainants and W. Fish Wilson, County Collector of Taxes of the county of Marion, and county collectors of taxes of the counties of Clinton, Washington, Perry and Randolph are made defendants.

After the margin and the address to the Court it is averred that this is a suit of a civil nature and that the matter and sum in controversy exceeds, exclusive of interest and costs, the sum and value of three thousand ($3,000.00) dollars, and the subject matter and parties defendant are located and reside in the eastern district of the United States Court of the State of Illinois.

I.

TITLE TO SUE AND LIABILITY OF COMPLAINANTS.

This paragraph qualifies as complainants the Illinois Southern Railroad Company, a corporation, duly incorporated under the laws of the State of Illinois, William W. Wheelock as receiver of the properties of that railway company appointed by the decrees of the

United States Circuit Courts for the Northern District of Illinois, the Eastern District of Illinois, and the Eastern District of Missouri in certain foreclosure proceedings and alleges that he is still in office by virtue of his appointment, and that the property had been sold to William T. Abbott as the representative of the bondholders under the mortgage or deeds of trust and that he had assigned his certificate of purchase to the Missouri and Illinois Railroad Company, a corporation, under the laws of the State of Missouri; and, that the several trustees of the mortgages had released their several interests in the property to the Missouri and Illinois Railroad Company. These allegations show separate and distinct interests of the several complainants in resisting the alleged illegal taxes, penalties, interest and costs stated in subsequent allegations of the bill, and their personal liability for taxes assessed, while operating the property.

II.

MAKING PARTIES DEFENDANT.

This allegation refers to the margin and makes the tax collectors of the several counties parties defendant.

III.

STATEMENT OF FACTS SHOWING VALUE OF PROPERTY, LOCATION OF RAILROADS AND DESCRIPTION OF PERSONAL AND REAL PROPERTY ASSESSED.

Under this paragraph it is alleged that the Illinois Southern Railway Company subject to the mortgages

and receivership operated said property prior to 1917, the location of the property through the several counties and the general character thereof is fully stated. It describes the property by specific description of the railway lines including all of the appurtenances, buildings, real estate, rails, ties, tools, stations, platforms, tool houses, locomotives, tenders, cars, engines, personal contracts, ordinances, leases, choses in action, rents, profits, income and all manner of real estate and interests therein, and includes all engines, tenders, cars, other rolling stock, equipment and superstructures. It is averred that said property was during the years 1917 to 1920, inclusive, not worth to exceed five hundred thousand ($500,000.00) dollars, and this averment is applied to the personal property described in this paragraph, that is to say, such property is not included in the description "railroad track," as well as to "railroad track." By reference to Paragraph I it will be noted that the sale of this property occurred on September 15, 1920, and, therefore, when all of the taxes involved in this suit became a lien upon this property the complainant, the Illinois Southern Railway Company and the receiver, William W. Wheelock, as we shall show when we come to refer to the law, became personally liable for the payment of all taxes which accrued during that time. It is also averred that such property was in each of the years 1917 to 1920, inclusive, advertised and offered for sale and no one bid

thereon but the property was forfeited to the State for want of bidders. In all subsequent paragraphs when a reference is made to the property described in the bill such reference includes both personal and real property and when application was made for judgment for delinquent taxes the application, as will be shown further on, included both taxes upon real estate and personal property charged against realty. These allegations were confessed by defendants, and they cannot dispute the facts.

IV.

METHODS OF ASSESSMENT BY STATE BOARD AND TAX COMMISSION—EXCESSIVE VALUATION, AND VALUES FIXED BY LOCAL ASSESSORS ON SIMILAR PROPERTY IGNORED.

This paragraph alleges that the State Board of Equalization for the years 1917 and 1918, and the Tax Commission, its successor, for the years 1919 and 1920 pretended to assess *the said property* located in the State of Illinois for the purposes of taxation; and it was the duty of said board and said commission, in making valuations and assessments, to inquire into the full, fair cash value of said property and consider the elements of fair value thereof and ascertain and fix the fair cash value of the same on a mileage basis, or upon some other reasonable basis, and then equalize the same by reducing or raising the value for assessment of said property below or above the fair cash value thereof to attain the same rate of valuation as that upon which

other property of State was valued and assessed by local assessors for the said years, and take as the assessed value thereof for each of said years pursuant to the provisions of the statutes of the State for the years 1917 and 1918, inclusive, one-third, and for the years 1919 and 1920 one-half of the full, fair cash value so reduced as the assessed value of the property assessed by them including the property of the railway corporations known as railroad track and rolling stock, and that said assessment was required by the statute to be based upon a return made to the Auditor of Public Accounts for the first two years aforesaid, and the said commission for the years 1919 and 1920, which was done, as follows: 1917, $345,494.00; 1918, $345,439.00; 1919, $345,601.00; 1920, $345,162.00. That notwithstanding the full cash value of said property was stated in said returns and verified, and the values were in fact full cash values, and an honest and open inquiry into the question would have verified said returns, and there were no facts in existence to be ascertained by inquiry to the contrary; nevertheless, for each of said years, in total disregard of their duties and obligations as public officials, said Board of Equalization and said Tax Commission refused to make any inquiry into the truth in relation to said returns and the values of the property, and fraudulently, wilfully and arbitrarily, without any exercise of judgment as to the full value of said property, without equalizing the

same, to put it upon the same basis as other lands, lots and other property of like character which were assessed by the local assessors, valued and assessed said property at grossly extortionate and excessive rates far in excess of that applied to all other property of the State and fixed grossly excessive full values thereof for each of said years; that on each of said years the valuations fixed were respectively, 1917, $2,045,097.00; 1918, $2,048,898.00; 1919, $1,872,786.00; 1920, $1,269,576.00; that said assessments were excessive by these amounts respectively; 1917, $681,699.00; 1918, $682,966.00; 1919, $936,383.00; 1920, $634,788.00. It is then averred that the values fixed and determined as assessed values were pretendedly one-third the full fair cash value of said property for the years 1917 and 1918, one-half of the full fair cash value of said property for the years 1919 and 1920, whereas, in truth and in fact said value so arbitrarily fixed far exceeds the full fair cash value of said property; that in making said valuations and assessments the said Board and Commission without any pretense of equalizing the property with that assessed by local assessors for said years wantonly and grossly overvalued the property without giving any attention whatever to the elements entering into the value thereof and so grossly disregarded their duty in making said valuations and disregarded the rules prevailing in the making of assessments that said

assessments were fraudulent and void and unjustly discriminatory against the railroad companies and the other of your orators; that they were denied due process of the law and the equal protection of the laws of the State of Illinois in violation of the Fourteenth Amendment to the Federal Constitution. An examination of this paragraph will disclose that all of its averments relate to all of the railroad property mentioned and described in Division III of the bill and includes all of the personal property of the railway company as well as the real property. In other words, "rolling stock" as well as "railroad track". And it describes the method adopted in assessing railroad property and contrasts the same with the method pursued by local assessors in assessing all other property of the same class.

V.

METHODS USED BY BOARD AND COMMISSION SHOWING DISCRIMINATION AGAINST RAILROAD PROPERTY AND COMPLAINANTS.

This paragraph alleges that in making their assessments the local assessors of the State had assessed all other property than railroad property assessed by the Board of Equalization and the Tax Commission upon a method of determining the full fair cash value of each item of property to be assessed, and then reducing the amount so fixed by an arbitrary method to a figure less than 70 per cent of the full fair cash value of the prop-

erty as fixed by said local assessors, and then by taking for the years 1917 and 1918 one-third thereof, and for the years 1919 and 1920 one-half therof; that the Board of Equalization and Tax Commission did not ascertain and reduce the value of property assessed by them by this method, but it was their duty to have done so in order to put railroad property upon the same basis as that assessed by local assessors; but, that the said Board of Equalization and the said Tax Commission well knowing the method applied by local assessors in each of said years in making assessments of all other property of the State than railroad property, nevertheless, disregarded said method and arbitrarily fixed the values aforesaid thereby discriminating against the said railway companies and other complainants in assessing their property at the grossly excessive valuation aforesaid in violation of Section 1, Article 9, of the Constitution of Illinois, which requires every person and corporation to pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct and not otherwise; and, by means whereof your orators were in the making said assessment denied the equal protection of the law and by the said Board of Equalization and the said Tax Commission and the said taxing collectors and taxing officers of said State of Illinois were

proposing and threatening to take the property of your orator without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

By reference to the facts stated in this paragraph and the preceding paragraph it will be seen that the methods adopted and followed by the Board of Equalization and the Tax Commission on the one hand and the local assessors on the other are minutely described and the result to the complainants definitely stated in showing the excessive valuations put upon their property. These two paragraphs taken together in substance allege: (a) Wilful fraud in knowingly and intentionally making the assessments of the property described in the bill at a grossly excessive and unreasonable valuation; (b) Knowingly gross discrimination against complainants in valuing their property by fixing the value thereof for assessment at a much higher rate in proportion to the fair cash value of the same as compared with the values fixed by the Board and Commission and by the local assessors on all other property of the State assessed for the respective years; (c) Fraudulent and unjust discrimination in the method of assessment adopted by the Board of Equalization and Commission as compared with the method of assessment followed by local assessors; (d) Wilful knowing and unjust discrimination

of the Board of Equalization and the Tax Commission in making their assessments based upon the full fair cash value of the property with knowledge that the local assessors were uniformally, methodically and arbitrarily reducing the fair cash value of property assessed by them to a figure below 70 per cent of the fair cash value thereof and for the years 1917 and 1918 taking one-third thereof and for the years 1919 and 1920 taking one-half thereof as the assessed value; (e) Assessment of railroad property and other property assessable by the Board of Equalization and the Tax Commission on the basis of its full fair cash value with knowledge that the method uniformally adopted and followed by local assessors would produce a uniform discrimination between the values fixed by the Board of Equalization and the Tax Commission upon the one hand and upon all other property not assessed by the Board of Equalization upon the other to an extent in excess of 30 per cent higher valuation of property assessed by the Board of Equalization and the Tax Commission in violation of the provisions of the Constitution of the State of Illinois which requires all property of every kind, with exceptions not here involved, to be assessed on a uniform basis of valuation at uniform rates and by uniform methods of assessment in violation of the due process

clause and the equal protection clause of the Fourteenth Amendment to the Federal Constitution; (f) The description in this bill of the general method of assessment adopted and pursued by the Board of Equalization and the Tax Commission conforms to the literal requirements of the Constitution of the State of Illinois, while they clearly show that both the Board and Commission at the time of making their assessments knew that the method uniformally pursued by the local assessors in assessing all other property of the same kind as that assessable by the Board and the Commission would produce a much lower valuation than that of the Board and the Commission and discriminate against the property assessed by the Board and Commission and the owners of such property to at least 30 per cent below the values fixed by the Board and Commission, and yet these two methods concurred and uniformally and methodically produced such unlawful discrimination in addition to the gross over valuation of compalinants' property in excess of its fair cash value alleged; (g) That it is definitely alleged the Board of Equalization and the Tax Commission in making said assessments made by the Board of Equalization and the Tax Commission and the owners of such property so arbitrarily overvalued the property of appellees and discriminated against them in making such overvaluations with respect to the property assessed by local assessors and other railroad property assessed by

them as to show that no judgment was exercised, and, therefore, their assessments were fraudulent and void; (h) That the method of assessment followed as a whole was a complete departure from the due process of law, and equal protection of the law required by the Constitution and laws of Illinois, by the State acting through its taxing officers.

These several averments are alleged to show fraud, want of due process of law and denial of the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States as well as a violation of the equality provision of the Constitution of the State of Illinois. No technical defect was pointed out to the averments of the bill in these respects in the the motion ruled upon by the United States District Court from which ruling alone this appeal is prosecuted.

VI.

DISTRIBUTION OF EXCESSIVE VALUES FOR TAXATION—TENDER AND ACCEPTANCE OF TAX DUE ON FAIR VALUE.

This paragraph alleges that after said assessments were made the Auditor of Public Accounts, for the years 1917 and 1918, and the Tax Commission, for the years 1919 and 1920, distributed and certified the value of said railway on a mileage basis to the county clerk of each of the counties aforesaid for each of said years, and that

such county clerks distributed the value so assessed upon the railroad tax books of each of said counties in such manner that the state, county, village, school district and all municipal taxes and special assessments were extended in the proportion of the values of said railways lying in each of the said taxing districts, on the basis of the excessive valuations and assessments aforesaid; and that the valuations were excessive and included divers items of excessive tax which were illegal and in excess of statutory and constitutional limitation of rates of taxation, and a statement of the taxes in each of the said taxing districts and municipalities of the several counties is set forth, showing the excess tax charged, the balance admitted to be due upon a basis of appellees' admissions of liability, after deducting all illegal taxes and deducting the taxes on the excessive valuations so distributed. This is a detailed statement and will be found on pages 11-38 of the printed record.

VII.

STATEMENT OF ILLEGAL TAXES IN ADDITION TO EXCESSIVE TAXES.

This paragraph contains a complete statement of the grounds upon which all taxes are alleged to be illegal on account of excessive rates of taxation, and other grounds and reasons are set forth in detail paragraphs. The amount of tax involved in this item is shown by the table on page 45 of the printed record to be $18,109.67.

VIII.

EQUITY JURISDICTION MULTIPLICITY OF SUITS, ETC.

It is here alleged that the illegally levied taxes upon such excessive valuations and the taxes otherwise illegal as set forth in the preceding paragraph, were levied and extended against the railway of the Illinois Southern Railway Company, becoming a lien upon the property described as aforesaid (again referring to the descriptions contained in paragraph III of the bill). That said property was purchased at foreclosure sale and by conveyances vested in the Illinois and Missouri Railroad Company; that during a portion of the time which the railroad was operated William W. Wheelock, as receiver, became liable for the payment of all taxes legally due upon the property; that Wheelock is still exercising his trust as receiver, and that certain adjustments of his accounts depend or may depend upon the amount of tax legally due; that all of said tax, with interest, penalties and costs, had been extended and charged against the property as delinquent taxes for the year 1921, and it was the duty under the law of the county collectors of the several counties to make application for judgment and proceed to a sale of said property, and, unless restrained, they would do so on the first Monday in June, 1921; and that thereafter they would sell said property (being all of said property) for taxes, and that if said tax should be collected, would distribute the same to a

very large number of taxing districts in the aggregate in excess of fifteen (15) districts per county, and to the State of Illinois, and that it would be impracticable to recover the taxes so paid or collected, and that on account of the sovereignty of the State of Illinois no tax could be recovered from the State.

This averment, together with the other averments of the bill, also shows that the Illinois Southern and Wheelock, receiver, whose duties were almost complete, would be liable for the tax, because it accrued while they were owners or operating the property, and that the lien continued on the property into the hands of the Missouri and Illinois Railroad Company, which company had contracted to pay the tax legally due; but what tax is legally due can only be determined by such an adjudication as is prayed for in this bill; that there are five (5) county collectors threatening to take judgment against five (5) several sections of the railway property of appellees and sell the same for the payment of taxes; that if the tax should be paid to avoid this multiplicity of suits to enforce the taxes, then the money paid would be practically beyond recovery. These several averments are relied upon to show inadequacy of remedy at law, because of a multiplicity of suits and inability to make the adjustments which the bill shows must ultimately be made in a court of law.

IX.

TAX DUE AND NOT DUE.

In this paragraph is set forth a re-extension of the taxes upon the basis of a fair and legal assessment and valuation of the property for each of the years 1917-1920, excluding all excessive, illegal taxes, estimating the amount of taxes legally due to each of the said defendants on the basis of 70 per cent of the fair value of the property assessed. It contains tables prepared by an expert, which show these several amounts to be due and the bill is verified. This statement shows these grand totals: Tax extended, $106,122.42; illegal tax entended, which includes tax not due because of irregular extension in excess of statutory and constitutional limitations and penalties not due, $18,109.67; excessive tax charged, $88,102.75; tax admitted to be due, $19,717.19. The amount admitted to be due is upon the basis of the valuation shown in the allegations of this paragraph, and it is further alleged that no tax remains due and unpaid to any or either of the defendants; that nevertheless the said defendants and each of them threaten to prosecute their several applications for judgments against said property for the remaining illegal, unconstitutional and void tax, and to obtain and enforce judgments against the said railroad properties and against the complainants, thereby taking their property without due process of law and in viola-

tion of the Fourteenth Amendment to the Federal Constitution. This averment also alleges that the action of the said Board of Equalization and the said Tax Commission, and the other taxing officers of the State, by means of the said assessments, as set forth in the bill, are attempting to take the property of the complainants without due process of law, and deny to them the equal protection of the law as the representatives of the State of Illinois. It is further alleged that the complainants are without adequate remedy, save in a court of equity, and the prayer is that the said several tax collectors be restrained and enjoined from collecting said illegal taxes; that writ of injunction may issue restraining them from making application for judgment against the said railroad property, and that upon final hearing the Court will determine the amount of tax that is equitably due to each of the defendants, and upon the ascertainment and payment thereof that a perpetual injunction be issued against them to restrain them from collecting any other taxes, interest, penalties or costs, and for a writ of subpoena and a writ of injunction.

The decree of the Court perpetually restrains the defendants from making application for judgment for taxes at any time subsequent to the entry thereof, "and from bringing any suit or suits for the collection of said taxes, interests, penalties or costs for said years other than the sums already paid and accepted by the defend-

ants for each of said counties," and the temporary and preliminary injunctions theretofore issued are made perpetual. (P. R. 85, R. 116.) This decree is rendered after a finding of the Court that all the taxes due had been tendered and accepted.

It will be found that many of the criticisms of the bill made by counsel for Appellants, as shown by our statement of its substance, are not well founded. The bill should be considered as a whole since the allegations upon its several subjects will not be found in any one paragraph, but a consideration of the whole bill will disclose that it is not defective in any of the particulars indicated by the criticsms of Appellants. Nor did they think so when the original motion to dismiss was considered for an examination of the answer filed will show that none of the present contentions were made in either the motion to dismiss or in the answer.

We shall not follow the order adopted in the Brief of Argument of Appellants, but shall sustain the bill by a citation of authorities in support thereof and then reply to the criticisms made by counsel for Appellants and answer the arguments advanced to show that the bill upon its face does not state a case within the equitable jurisdiction of the United States Courts. We follow this method because Counsel for Appellants have not, in their treatment of the subject, distinguished between the federal jurisdiction of the United States District Court and the equitable jurisdiction of that Court and in our discussion we shall treat these two branches

of the subject separately and endeavor to show what authorities discussed by counsel for Appellants relate to the subject of federal jurisdiction and what relate exclusively to equitable jurisdiction. The statement of the question raised by the motion to dismiss, is as follows:

> "It appears from the face of the Bill of Complaint filed herein that the only alleged invalidity of the taxes sought to be enjoined by the decree of this Court consist wholly of discriminatory overvaluation of the property of the complainants.
>
> "It further appears from the allegations of said Bill of Complaint conclusively that the complainants have an adequate remedy at law, and that no grounds are stated in said Bill of Complaint that would justify a Court of Equity in taking jurisdiction of the matters therein charged and stated."

Counsel for appellants apparently did not intend to rely upon but one point in this Court, namely, that there is no equity on the face of the bill, and this is confirmed by the express waiver of the question of federal jurisdiction on page 56 of his brief in these words:

> "First. There must be federal jurisdiction or a federal question. This requirement is met in all of the cases, as well as in the case at bar, with the averment that the taxpayer is about to be deprived of his property without due process of law. It is not sufficient, however, that this one condition is

found to exist, but it must also concur with the further condition and essential requirement that some ground must be stated for equitable relief."

However, the confusion of these two questions and authorities applicable thereto, to which we have referred, constrains us to cover both points by our brief since it will be necessary to file the same before this Court has passed upon the motion to dismiss for want of jurisdiction to be presented on October 29, 1923. This course is pursued with the understanding upon the part of counsel for appellees that if the motion is allowed the briefs filed will be transmitted to the Circuit Court of Appeals as a part of the Record.

STATEMENT OF THE LAWS OF ILLINOIS IN RELATION TO THE LEVY AND COLLECTION OF TAXES.

ASSESSMENT.

Preliminary to a discussion of the structure of the Bill and the law upon which its allegations are based, it is necessary that we draw attention to the tax laws of Illinois and the methods relating to the assessment of various kinds of property, and the enforcement of the collection of taxes. With exceptions not material to this discussion property is not classified for the purposes of taxation in Illinois. On the other hand, the Constitution prohibits classification of property for that purpose.

"Every person and corporation is entitled to the protection of the constitutional provision, which precludes discrimination in favor of or against any class of property, person or corporation, and the statute, (in relation to assessment by local assessors), is designed to affect that object."

First National Bank v. *Holmes*, 246 Ill 366.

See also:

Peoples Gas Light and Coke Co. v. *Stuckart*, 286 Ill. 164.

Section 10 of Article XI of the Constitution of 1870 provides, that the rolling-stock and other movable prop-

erty belonging to a railroad company shall be considered personal property and liable to execution and sale in the same manner as other personal property.

Property is valued for assessment in accordance with the provisions of the Constitution by different kinds of boards and commissions, depending upon the class or county in which the same is located, and whether of such kind as that it is apt to be located in more than one county. In other words, all tangible property that is of a local nature is assessed by township assessors and deputy assessors under the supervision of supervisors of assessment and county boards of assessor. And, all property such as railways and the property of certain other classes of corporations not of a local nature is assessed by the Tax Commission, and prior to 1919 by the Board of Equalization. The manner of listing and valuing property as to method varies, but it is all required to be first valued at its fair cash value and then assessed at one-half of such full fair cash value beginning that proportion of assessment in the year 1919, but prior to that time at one-third of its fair cash value. The schedules or lists of personal property for the valuation of personal property are made up by the taxpayers with or without the assistance of the local assessor as to local property and is supposed to be verified by the oath of the taxpayer. The supervisor of assessments has various

duties to perform in order to effect uniformity and procure the assessment of all property liable to taxation. His separate duties are performed during the progress of listing and valuing property for taxation. Real Estate, except that assessed by the Tax Commission, is assessed by the local assessors and the statute requires an examination of the property by them to ascertain its fair cash value, and a general valuation thereof is made by the local assessors every four years. Local assessments are subject to review by Boards of Review which are differently constituted in different classes of counties whose duties are similar, being chiefly that of classifying the assessments among the different localities assessed by local assessors and obtaining a valuation of all the property, hearing complaints on assessments and assessing omitted property. The assessment of local property is made as of the first day of April and is supposed to be completed by the first Monday in June of each year. The Boards of Review are supposed to meet on or before the third Monday in June of each year and revise and equalize the assessments of local property within their several jurisdictions and their final figures are certified to the Tax Commission for equalization with all other property of the State and the latter is given practically plenary power to make all assessments equal and put them on the same basis. Prior to 1919 railroad property was assessed by the State Board of Equalization, con-

sisting of an elected member from each congressional district and vested with the duty of not only making original assessment of railroad and certain other classes of property, but of equalizing the assessment of all kinds of property throughout the State so as to place the valuation of all property upon a uniform and equal basis of valuation so that every person and corporation would pay a tax in proportion to the fair cash value of his, her or its property as required by the Constitution. The statute provided that the Board of Equalization should meet on the second Tuesday of August and examine the abstracts of property assessed for taxation in the several counties of the State as returned to the Auditor and equalize the assessments as provided by statute, but it was expressly provided that the Board should not reduce the aggregate assessed value in the State; nor increase the aggregate except in such amount as may be reasonably necessary to adjust equalization and not exceeding one percent on the aggregate assessed valuation. (Jones & Addington, Ill. Stat. 5507, paragraph 9304, Section 105). It is also provided by Section 40 of the Revenue Law that every person, company or corporation owning, operating or constructing a railroad shall return sworn lists or schedules of taxable property of such railroad. (Cahill's Ill. Stat. 1923, p. 2840; and Section 41 provides that such schedule shall be filed with the County Clerk and show the length

of the main and all side and second tracks and turnouts in the county and in each town and village in the county through or into which the road may run, the value of improvements and stations located on right-of-way, and that when the statement has once been made it shall not be necessary to make it again except as changes of property require, but that the company shall in the month of April, annually, report the value of such property by the descriptions required by statute. (Cahill's Ill. Stat. 1923, p. 2840.)

Section 42 provides that the right-of-way, including the superstructures, all side and second track and turnouts and station improvements, shall be held as real estate and assessed as railroad track and in what manner it may be described on the tax books.

Section 45 provides that rolling stock shall be listed and taxed in the several counties, towns, villages, district and cities in the proportion to the length of the main track used or operated therein. (Cahill's Ill. Stat. 1923, p. 2841). Section 46, that tools, material, etc., shall be listed and assessed where located. (Cahill's Ill., Stat. 1923, p. 2841). Section 47, that all real estate, including buildings and other structures not denominated railroad track shall be listed and assessed as lands and lots; and Section 48 provides for a schedule for the assessment of capital stock to be returned to the Board of Equalization.

Section 49 imposes a penalty for failure to file the schedules with the Board of Equalization and local assessors as required. (Cahill's Ill. Stat. 1923, p. 2841-2842).

Section 50 requires the auditor to annually lay before the State Board of Equalization the schedules returned to him and said board to assess the property in the manner provided for by the general provisions of Revenue Law, which apply alike to railroad and other property except as to the formal procedure definitely specified in various sections of the statute. (Cahill's Ill. Stat. 1923, p. 2842).

Section 51 requires the County Clerk to procure at the expense of the county, a record book properly rules and headed in which to enter all railroad property of all kinds listed for taxation, and that he should enter the valuations as corrected and equalized in the manner provided by law thereon and extend the taxes for each taxing district therein. (Cahill's Ill. Stat. 1923, p. 2842). And, also that a warrant shall be attached to the railroad tax book under the hand and seal of the County Clerk at the time the same is handed to the Collector, requiring him to collect the taxes charged against railroad property and account for the same as provided for by law in other cases. (Cahill's Ill. Stat. 1923, p. 2842).

It will be observed from the foregoing provisions that there were three classes of railroad property to be

assessed by the Board of Equalization — "railroad track", "rolling stock" and "capital stock", or, in other words, the franchise or intangible value of the property. The "railroad track" is denominated by the statute as real estate, and other classes of railroad property are expressly made by the Constitution and statute, personal property. It should also be noted that all other property not denominated "railroad track" and all other personal property not denominated "rolling stock" is assessed in the same manner as other property by local assessors; but, such property was all required to be returned by the railroad company in the schedules provided for in Sections 40-45 previously quoted; and, Section 51, requires the listing of railroad property upon a separate book, by the County Clerk and the County Collector is required to collect railroad tax instead of local collectors under a warrant issued to him by the County Clerk for that purpose, this further distinguishing the method of collecting tax upon railroad property from the method adopted in collecting taxes against other property. This section provides that the Clerk shall enter in said book "the railroad property of all kinds as corrected and equalized for taxation."

METHODS OF COLLECTING TAXES FROM RAILROAD COMPANIES.

It will be remembered that paragraph III of the Bill

the statutes here referred to apply, and, therefore, the property in controversy includes real and personal property assessed and valued by the Board of Equalization and Tax Commission; and, also, real and personal property assessed by local assessors, and all averments of the bill refer to all the property described in paragraph III, of the Bill. We call special attention to this because in their brief and argument counsel for appellants have insisted that no personal property was involved in these assessments and proceedings. The statutes to which we have referred are not obsolete on account of the enactment of the Tax Commission Act entitled, "An Act in relation to the assessment of property for taxation," approved June 19, 1919, in force July 1, 1919.

The Tax Commission was created to take the place of the State Board of Equalization and the powers exercised theretofore by the Board were greatly amplified when committed to the Tax Commission. They were given power to prescribe general rules, to provide blank forms for all tax procedure and assessments, to assess railroad property denominated railroad track and rolling stock, to equalize the valuation and assessment of all property throughout the State, to order re-assessment of real and personal property or any class thereof in any county or taxing district, to take testimony, require production of books, papers, compel the attendance of witnesses, and conferred more ample equalizing

authority by authorizing the Commission to lower or raise total assessed value of property in any county, to make it bear a just relation to the assessed value of property of other counties subject only to the limitation that the amount of such increase or decrease in any one county should not exceed ten percent of the total assessed value of all property in the State, and that the aggregate should not be increased except to produce a just equalization.

The usual method of enforcing the collection of taxes upon personal property is by distress and sale of personal property of the taxpayer in the same manner as sales are made under execution issued from Courts of law. This is done in enforcement of tax liens created by statute; and against real estate enforcement is by the return of delinquent lists by the collector, which are made up on the tax forefeiture, sale and redemption record by the County Clerk; and the proceedure is then by publication notice and application for judgment for delinquent taxes in the nature of a proceeding **in rem** on the first Monday in June after the tax is due, and the tax books are in the hands of the collector; and the railroad tax book remains with him, and other provisions of the statute make the lien upon personal property effective even after return of the tax books to the County Clerk; and that statute continues in vital effect the warrant to the collector, so long as the taxes remain unpaid.

All taxes are a lien upon personal property of the person assessed from and after the tax books are received by the collector. There are other provisions of the tax laws which make the owner of real estate or personal property liable to an action of debt for the recovery of any delinquent tax, either real or personal, assessed upon property owned or controlled by him at the time the tax lien attaches thereto, or the tax books are delivered to the collector.

We shall print the various pertinent provisions of the Constitution and statute in an appendix to this brief for convenient reference and index the same, so the Court may see the extent of counsel's misconception of their provisions.

ESTABLISHED PRINCIPLES OF ASSESSMENT AND TAXATION.

The Constitution and statutes of Illinois have been construed by its Courts and certain fundamental principles of assessment and taxation have been established as the law of the State, beyond controversy. The principles here involved may be stated with definiteness and are as follows:

(1) Property for taxation must be assessed by valuation so that every person and corporation shall pay

a tax in proportion to the fair cash value of his, her, or its property.

(2) There is great diversity of methods of assessment, valuation, and of officers and bodies for making assessments and valuations of the several kinds of property to be taxed, but this diversity does not violate the principles of equality and uniformity required by Section 1 of Article IX of the Constitution of 1870, if the result attendant is substantially the same as to each separate method or separate officer or body employed in making the assessment, or if not substantially the same the valuation the difference is such that it can be accounted for as the honest exercise of judgment and not from palpable or gross disregard of duty, or knowing and wilful misconduct of taxing officers amounting to either constructive or actual fraud.

(3) The ultimate authority for fixing the value upon which all taxes are extended in Illinois is the State Tax Commission, and prior to 1919 the State Board of Equalization; that such bodies were and are vested with full power to put all property upon an equal basis by equalizing, property assessed, by local assessors as related to the several assessments of the counties of the State and making assessment of property assessed by such commission or board upon the same basis. In performing its duty, the Tax Commission or Board of Equal-

ization, as the case might be, was and is required to proceed with an honest inquiry and base its judgments upon the actual facts and conditions. Gross disregard of duty by such board or commission, proven by actual facts, or inferred from the gross and palpable over-valuation of property assessed by it as compared with its equalized value of property assessed by local assessors, is held to be fraudulent and a denial of the due process of law and equal protection of the law by such board or commission in performing its duties, having committed to it State authority under the exercise of which alone it can act at all. Such action of such board or commission is State action and a denial of due process of law and the equal protection of the law in violation of both the Constitution of the State of Illinois and of the 14th Amendment to the Constitution of the United States.

(4) That railroad track is, under the Constitution and laws of Illinois, real estate, and all other property except lands and lots not used for railroad purposes is personal property, and the laws in relation to the collection of personal tax and real property tax from personal property applies to railroad companies and makes their rolling stock and all other personal property subject to distress and sale, without the intervention of the judgment of a Court, at the will of the tax collector

from the time of the delivery of the railroad tax book, upon which the taxes are charged until the tax is paid.

(5) That the taxes on property of railroad companies are assembled on a book called the "Railroad Tax Book" and must be collected by the County Collector and not by deputy collectors or township collectors, and the application for judgment for delinquent taxes is based upon the railroad tax book. Attached to the railroad tax book is a warrant which authorizes the collector to levy upon any personal property of a railroad company and collect by sale of such property in the same manner as sales upon execution, any tax, real or personal, of such railroad company, past due.

Reference to the appendix containing the Illinois statues will fully sustain this statement.

BRIEF OF ARGUMENT.

As we have shown the motion to dismiss raised but a single question, whether the bill on its face states a cause within the equitable jurisdiction of the United States Courts as those courts have settled that jurisdiction by their decisions. Nevertheless, in his brief on the motion to dismiss, (which motion is yet undetermined), counsel for appellants attempted to construe into the record a denial of due process of law which he claims is implied by the statement in his motion to dismiss in the District Court in these words, "It further appears from the allegations of the bill of complaint conclusively that the complainants have adequate remedy at law." Therefore, we deem it proper to discuss briefly two questions: (a) Whether the allegations of the bill state a case within the jurisdiction of the United States District Court as a federal court; and, (b) whether the allegations of the bill state a case within the equitable jurisdiction of the United States Court, as a court of equity.

In addition to these two questions we shall reply to the fallacy advanced by counsel for appellants that because there may be a remedy for the alleged violation of the Fourteenth Amendment to the Federal Constitution under the laws of Illinois, therefore, there is an adequate remedy at law within the interpreted meaning

of that phrase and the Court should have dismissed the bill for want of equity.

The misconstruction of the record, the issues and the decree by counsel for appellants made it necessary for us to fully state the substance of the bill and the proceedings in the Court below. It will not be necessary for us to repeat that statement or discuss the facts of the bill except as they relate to the questions directly involved or claimed by counsel for appellants to be involved.

I.

THE ALLEGATIONS OF THE BILL ESTABLISH THE JURISDICTION OF THE DISTRICT COURT AS A FEDERAL COURT AND ARE CONCLUSIVE THAT THE STATE OF ILLINOIS, THROUGH ITS STATE BOARD OF EQUALIZATION AND STATE TAX COMMISSION, IN VALUING THE PROPERTY OF COMPLAINANTS FOR ASSESSMENT, DENIED TO THEM DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAW, AS REQUIRED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

Paragraph 1, Section 24, of the Judicial Code, conferring jurisdiction upon the District Courts is as follows:

> "First: * * * of all suits of a civil nature at common law or in equity brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same state claiming land grants from different states, or where the matter in controversy exceeds exclusive of interest and costs the sum or value of three thousand dollars, and (a) arises under the Constitution and laws of the United States, etc."

The question first raised by the filing of the bill was whether the United States District Court had jurisdiction as a federal court to hear the matter presented. This question related to the power of the Court and upon the theory of the bill before the Court could exercise any power there must have been a claim that a right guaranteed by the Federal Constitution or valid laws made in pursuance thereof had been violated, or infringed.

This requirement was met by the allegation that the action of the State Board of Equalization and the State Tax Commission was in conflict with the Fourteenth Amendment. Whether that claim was well or ill-founded was a question which might or might not be an issue for decision upon the hearing of the cause upon its merits and whether in issue had no direct relation to the question of jurisdiction. If the defendant desired to contest whether there was in fact a violation of the Fourteenth Amendment in the manner alleged he should have raised that question by motion and preserved it in the record for review by this Court, or raised it in some other way, so that the record would show that the District Court in fact adjudicated an issue between the complainants and defendants with respect to the alleged violation of the Fourteenth Amendment. As we have shown, that was not done, but, on the contrary, the record shows that counsel for appellants so limited his motion to dismiss that only the question of jurisdiction in equity, as dis-

tinguished from jurisdiction at law, was raised.. However, had the question been raised, we shall later show that it was unnecessary for the Court to decide it, for having taken jurisdiction of the cause, if the bill presented a case within the equitable jurisdiction of the District Court as distinguished from its jurisdiction as a federal court, and there was a bona fide presentation of question to the Court by complainants' pleadings, then although the Court might have decided that question against the complainants, yet, if upon consideration of the bill upon motion to dismiss, or the facts in support thereof upon a trial of the issue complainants has established a case within the equitable jurisdiction of the Court, it would have been its duty to decide the case upon its merits, although it felt constrained to decide the federal question adversely to the complainants.

The question whether the allegations of the bill state a bone fide federal question can only be determined by a reading of the bill at large for the allegations showing the conduct of the taxing officers of the State of Illinois are contained in several paragraphs and no single allegation can be isolated and treated as the only foundation upon which the claim of federal jurisdiction must rest. An examination of the bill as a whole, however, will disclose in definite allegation the following facts:

(1) That in making the assessments the State Board of Equalization and State Tax Commission wil-

fully and arbitrarily assessed the tangible property of complainants and all other railroads upon the basis of its full, fair cash value, when they knew that local assessors had assessed all other tangible property on the basis of more than seventy (70%) per cent below its fair cash value, and did not attempt to raise and equalize the assessments of other property made by local assessors, or reduce the original assessments made by them, so as to put all tangible property of the same class under the Constitution upon the same basis; and, it is alleged that this was knowingly and wilfully done, and caused such gross discrimination against appellees and their property as constituted an actual and constructive fraud upon complainants, and therefore a denial to them of due process of law and equal protection of the law, under the Fourteenth Amendment.

(2) That the system of assessing by the State Board of Equalization was to base its assessments upon fair cash value, while the local assessors based all of their assessments upon less than seventy (70%) per cent of fair cash value, and this was known to both the local assessors and the Board of Equalization and Tax Commission as systematically persisted in, covering all the years for which this property was taxed.

(3) That the returns under oath to the State Board of Equalization and the State Tax Commission for the several years were as follows:

For the year 1917.....$345,494.00
For the year 1918..... 345,439.00
For the year 1919..... 345,601.00
For the year 1920..... 345,162.00

And that such returns were and were known by the State Board of Equalization and the State Tax Commission to show the full, fair cash value of complainants' property, but they knowingly, wilfully and fraudulently valued the same for assessment at

For the year 1917.....$2,045,097.00
For the year 1918..... 2,048,898.00
For the year 1919..... 1,872,786.00
For the year 1920..... 1,269,576.00

That the discrimination against complainants in the method of assessment adopted resulted in their having charged against them, instead of $27,709.86 taxes, the aggregate is $106,122.42, of which but $18,109.67 is excessive or illegal taxes and penalties, and this large sum does not include penalties, interest and costs since 1921, in the estimated further sum of $30,000.00. And, it is alleged that the overvaluation producing this discriminatory result is so gross that it was fraudulent and void, but that the assessments were made wilfully and knowingly by the State Board of Equalization and the State Tax Commission with full knowledge of the overvaluation and discrimination which would flow therefrom.

(4) That the method of assessing the tangible property of railroad companies and the property of the complainants in particular, and the method of equalization of all other property of the State adopted and followed by the State Board of Equalization, as set forth in the bill, was contrary to the provisions of the Constitution and laws of the State of Illinois, and the rules of valuation and assessment adopted and followed by the State Board of Equalization and the State Tax Commission as applied to all other property; that in assessing all other property the State Board of Equalization and the State Tax Commission valued the same at its fair cash value and took as the assessed value prior to 1919 one-third thereof and subsequent to 1919 one-half thereof as the assessed value; that they did not equalize other property assessed by local assessors, to put it on the same basis as that upon which they placed railroad property; therefore, it follows that they departed from the Constitution and statutes in making these assessments and equalizations in the following particulars:

(a) They did not, as the law requires, either reduce the fair cash value of railroad property to a point less than seventy (70%) per cent of its fair cash value arbitrarily to fix a basis for assessment, as was done by all other taxing officers of the State, and put it on the same basis of valuation as such other property had been

placed, nor raise the assessments on all other property of the State under their power to equalize, so that other assessments would represent for the years prior to 1919 one-third of its cash value and since that time one-half of its cash value, as was the case with all railroad property assessed by them.

(b) They did not assess the property of complainants on the same basis that they assessed all other railroad property, but instead of valuing it at its fair cash value, they so grossly overvalued it that they could not have but known that they were doing so; and it is alleged that they knowingly and wilfully overvalued it in 1917 5.82 times its full value; in 1918, 5.93 times its full value; in 1919, 5.42 times its full value; and in 1920, 3.67 times its full value.

(5) It is further averred that this property was in litigation; that the tax had not been paid, but forfeited to the State for want of bidders at tax sales year after year; that it was generally known throughout the State and especially by the Board of Equalization and the Tax Commission that this railroad company was bankrupt and unable to pay operating expenses, and for that reason had suspended operation, and that its property was worthless for railroad purposes; that there were no facts upon which an honest inquiry as to the value of its property would have determined its value to be in excess

of that shown by the returns for each of the several years; that the Board of Equalization and the Tax Commission, though vested with power and authority and charged with the duty of making such investigation, made none, but acted totally and wholly in disregard of their duties under the requirements of the law and the knowledge of the value of this property possessed by them, and arbitrarily and grossly overvalued and assessed the property in violation of the rules of valuation adopted by them and the Constitution and laws of the State; that these facts constitute a denial of due process of law and of the equal protection of the law by the State of Illinois through the unlawful action of its State Board of Equalization and State Tax Commission by the concurrent enforcement of valid laws for the collection of taxes by other taxing officers.

It would seem it is conclusively established by the decision of this Court that the methods of the State Board of Equalization and the State Tax Commission are accurately characterized and illustrated by the allegations of the bill. Their methods were, in a case similar to this, illuminated and condemned by the Supreme Court of Illinois. In a legally synonymous case the action of the State Board of Equalization, in making an assessment of the capital stock of a corporation, was held to have violated the Constitution of the State of Illinois,

requiring equality and uniformity in making assessments and the findings of the Court necessarily establish a taking of the property of the taxpayer without due process of law, and denying such equal and uniform assessment as would within the meaning of the Fourteenth Amendment be a denial of the equal protection of the law. In that case the Court stated the averments of the bill and said:

> "The appellant's case is not based upon an actual valuation of its property above its fair cash value, but upon an intentional, and therefore fraudulent, systematic undervaluation for assessment of all other property in the State, and particularly by the State Board of Equalization, of the value of the capital stock and franchise above the value of the tangible property of all other corporations except the appellant. The case is substantially that appellant's property was assessed at practically its full value, while all other property was so grossly undervalued as to make the appellant pay a much larger proportion of the taxes than it should."

In this case, our bill fully shows a similar state of facts, and in addition that there was an intentional overvaluation of appellees' property in excess of other property of the same kind and class assessed by the Board of Equalization and Tax Commission, averaging for the four years 5.22 times the fair cash value of the property.

It was averred with respect to the manner of assessment in that case:

"That it is a gross fraud upon the appellant and imposes upon it a greater proportion of the public burden than is borne by other similar corporations and than is borne by any other property of the same value, and amounts to the taking of the appellant's property without due process of law, imposes an unequal burden of taxation, and is therefore in contravention of the provisions of the Constitution of the State requiring that taxes shall be equal and uniform throughout the State."

In summarizing the conclusions of the Court, Justice Dunn said:

"The State Board of Equalization has the duty of equalizing the valuation of property as listed and assessed in the different counties of the State in accordance with the provisions of the Revenue Act. It is also an assessing body, whose duty it is to assess, among other things, the capital stock of certain corporations, and it has the power to adopt rules for that purpose, which it is bound to adhere to and faithfully apply in all cases where they are applicable. An assessment arbitrarily made by the board in disregard of its own rules for ascertaining the value of the capital stock of corporations cannot be sustained. (*Calumet and Chicago Canal and Dock Co.* v. *O'Connell*, 265 Ill., 106.) The collection of a tax extended upon such assessment will be enjoined. (*Calumet and Chicago Canal and Dock Co.* v. *Stuckart, supra.*) The Board of Equalization which made this assessment was bound to make it according to law and the rules which it had promulgated for assessing the capital stock of corporations. It did

not do so, but knowingly and intentionally disregarded its rules completely, making no pretense of applying them in the great majority of cases and making its valuations in the individual cases according to its will without reference to the rules, instead of according to its judgment with reference to the rules. The appellant was knowingly and intentionally discriminated against, and the result was a fraud upon it. The assessment cannot be sustained."

The People's Gas Light Co. v. *Stuckart*, 286 Ill., 177.

In discussing the illegality of departure by the State Board of Equalization from the methods of assessment adopted by it in the assessing of property of an individual taxpayer, the Supreme Court of Illinois, in another case, said:

"The State Board of Equalization has no right, in disregard of its own rules established for the assessment of the capital stock of all corporations, arbitrarily to assess the capital stock of one corporation by an exercise, not of its judgment but of its will, without reference to the requirements of those rules. According to the averments of the bill, that is what was done in this case, and the demurrer should have been overruled."

Calumet, etc., Dock Co. v. *O'Connell*, 265 Ill., 110.

In another case in which the State Board of Equalization assessed the capital stock of a dock company without giving consideration to the market quotations of its stock during the period of taxation, the Supreme

Court of Illinois held that in ignoring such evidence and making the assessment on an arbitrary basis without giving consideration to the actual value of the stock its assessment was arbitrary, fraudulent and void. This was but another way of saying that such an assessment denied to the dock company due process of law and the equal protection of the law. The Board hal certain rules in relation to the assessment of capital stock and those rules were also disregarded in making this assessment. The Court said:

> "The assessment of capital stock must be made by the board in accordance with its rules. The evidence cited indicates that the assessment was not so made. It was assumed that the corporation enjoyed some special rights by virtue of its charter. While the board is not necessarily bound by the market quotations of the shares of stock in determining their value, these cannot be disregarded and an assessment made without evidence and in violation of the rules of the board sustained, even though the assessment of the tangible property were regarded as lower than it should be."

If assessments in violation of rules made by the Board or Commission resulting in injury to the tax payer is a fraud, and denial of due process of law, what must be said of an assessment in violation of the Constitution, wilfully made in face of actual knowledge that the assessments are grossly excessive?

Calumet, Etc. Dock Co. v. *Stuckart*, 275 Ill. 255.

It will be observed that want of due process of law and equal protection of the law as defined by the federal courts is present in all of these Illinois cases, because there was arbitrary action without the exercise of judgment and discretion; assessments were made by the exercise of will instead of judgment. Turning to a discussion of this subject by writers on the Federal Constitution and the federal courts we find:

(a) ASSESSMENTS SHOW WANT OF DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAW WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT.

McGehee, Due Process of Law, says:

> "While the English provision exists solely against executive action, under our system of paramount written constitutions, to which all departments of the government are equally subject, the provision extends alike to the executive, judicial, and legislative activities of the states and the nation."

McGehee, Due Process of Law, p. 26;
See also, *Chicago R. Co. v. Chicago*, 166 U. S., 226.

Due process of law and law of the land are phrases indicating practically the same thing. Mr. Webster, in in Dartmouth College case, gave a definition to due process of law or law of the land which endures to this time and is as follows:

> "By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that

every citizen shall hold his life, liberty, property and immunities under the protection of general rules which govern society."

This Court has said:

"Due process of law within the meaning of the (Fourteenth) Amendment is secured if the laws operate on all alike and do not subject the individual to any arbitrary exercise of the powers of government."

Giozza v. *Tiernan*, 148 U. S., 657;
Yick Wo v. *Hopkins*, 118 U. S., 356.

This Court also said, in Ex p. Virginia:

"They, (the words of the Fourteenth Amendment here involved), have reference to the state actions of the political body denominated a State, by whatever instruments or in whatever modes that action may take. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The Constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. **Whoever, by virtue of public positions under a State government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the law, violates the Constitutional inhibition; and as he acts in the name of and for the State, and is clothed with the State's power, his act is that of the State.** This must be so or the Constitutional inhibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

McGehee on Due Process of Law, p. 27;
Ex p. Virginia, 100 U. S. 339;
Hovey v. Elliott, 167 U. S., 409.

In a case somewhat similar to this in which the State Board of Equalization being required by the Supreme Court of Illinois to re-assemble and make an assessment of property in accordance with the law, arbitrarily and wilfully assessed the same without the exercise of judgment or discretion under circumstances which indicated either that the board acted under fear of contempt of the Supreme Court, or out of resentment because they had been commanded to re-assemble and do their work over. After discussing that situation Judge Grosscup, sitting as a circuit judge, deduced the correct principle as follows:

> "The sum of it all is that by whatsoever causes brought about the reassessment complained of did not in our opinion express the real judgment of the State Board as an independent tribunal and were, therefore, in effect fictitious judgments for the impeachment of which, somewhere, the law holds out opportunity to the parties injured."
>
> *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed., 505.

He then concluded that as the Constitution and laws of Illinois provided due process of law and the Board of Equalization wilfully and intentionally departed therefrom and assessed the property involved in that suit at a grossly excessive valuation as compared with the assess-

ment of other property of the State without exercising any judgment, but arbitrarily, that such action was a denial of due process of law; that the Board of Equalization represented the State, its action was State action, and its want of the exercise of judgment wrom whatever cause gave to the aggrieved taxpayer the right to resort to the federal courts under protection of the due process of law provision of the Fourteenth Amendment of the Constitution. His discussion of the subject is most interesting and illuminating and is as follows:

> "Due process of law, as applied to the cases under consideration, is the authorized procedure whereby the property of the individual can be taken by the state. It includes the initial authority to levy taxes; the purpose to which the money thus raised is to be devoted; and the instrumentalities that distribute the burden upon the citizens. Ours is a government of laws, and not of individual officers, or of boards or of men. Any substantial departure, therefore, in the collection of taxes, from the law, either as to the authority for the tax, or its purpose, or the provisions for the just distribution of its burdens, is a departure from due process of law; and the enforced collection of taxes in the laying and distributing of which there is a substantial departure from law, is the depriving of the citizen of his property without due process of law.
>
> "A substantial step in the taxing process as fixed by the law of Illinois as a step essential to the distribution of the burdens of taxation, is the decision and judgment of the State Board of Equaliza-

tion. The board's place in the taxing system is that of a quasi-judicial body. Its judgment affects, as keenly as that of any court, the property interests collectively of the several districts of the State, and directly and individually of the persons and corpora-

"No court can by its judgment grasp more completely what would otherwise remain the property of the individual. In no other tribunal can there be found apter illustration of the power of the State to compel the individual to deliver up his property under stress of law. It needs no argument to show that power such as this is only exercised rightfully when exercised judicially. The prime quality of every judgment, without which it is no judgment, is, that it is the final thought of the judge on the subject submitted, unaffected by extrinsic influences. This implies freedom of mind—not merely theoretically, but practically—the freedom of mind that does not fear, that has no wish of its own, that sees nothing not seen through the lenses of the law. Judgments honestly made up in such an atmosphere, though subject to review for error, are due process of law. Judgments affected by fraud or fear, however solemnly entered are nothing, when weighed by the constitutional guaranties thrown around liberty and property."

Chicago Union Traction Co. v. *State Board of Equalization*, 114 Fed., 566.

This was said not of the legal procedure of Courts in enforcing collection of taxes subsequent to assessment, but of the acts of this board in making arbitrary assess-

ments without the exercise of honest judgment as required by law.

The case of *Chicago Union Traction Company* v. *State Board of Equalization* was succeeded by the case of *Raymond* v. *Chicago Union Traction Company*, which was based upon substantially the same facts. The assessment made by the State Board of Equalization in obedience to the mandate of the Supreme Court of Illinois was certified to the County Clerk of Cook County, and the tax extended against the property of the Traction Company. A suit was then filed in the United States Circuit Court for the Northern District of Illinois to restrain him from collecting the tax. The bill tendered the amount of tax due on the same basis as other property of like character was assessed by the State Board of Equalization and by local assessors. The questions raised in that case were the same as those raised here and Mr. Justice Peckham on consideration of the record cited the case of *Louisville Trust Company* v. *Stone*, 46 CCA 299, and quoted from the same with approval in these words:

> "In the last case, which related to enjoining the collection of alleged illegal taxes by reason of discrimination, the Court said: 'It may be conceded that, if the allegations of the bill are made out, there exists, in respect to the property of complainant and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by the taxing officers of the state, which necessarily effects

an unjust discrimination against the property of which the plaintiff is the owner, and a bill of equity will lie to restrain such illegal discrimination, and that in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the 14th Amendment.' "

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 36; 53 L. ed. 87.

It will be observed that the quotation from the Louisville Trust Company case was intended as a summary of the principles involved in the case under consideration, and in support thereof the Court cited the following additional cases:

Reagan v. *Farmers' Loan & T. Co.*, 154 U. S. 362, 390, 38 L. ed. 1014, 1021;
A. Backus, Jr., & Sons v. *Fort Street Union Depot Co.*, 169 U. S. 557, 565, 42 L. ed. 853;
Fargo v. *Hart*, 193 U. S. 490, 502, 48 L. ed. 761;

This Court then discussed the principles involved and emphasized the facts as exceptional, but so far as the same were quoted or refrred to in such discussion they involve precisely the same principles as are involved in the case at bar.

It was said:

"The case before us is one which the facts make exceptional. It is made entirely clear that the board of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different principle or followed a different method from that adopted in the case of other like corporations whose property

the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the state, through the board. There is here no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the state, which the state might do (*Coulter* v. *Louisville & N. R. Co.* 196 U. S. 599, 49 L. ed. 615, 25 Sup. Ct. Rep. 342), but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. The result is an enormous disparity and discrimination between the various assessments upon the corporations. The most important function of the board, that of equalizing assessments, in order to carry out the provisions of the Constitution of the state in levying a tax by valuation, 'so that every person shall pay a tax in proportion to the value of his, her, or its property,' was, in this instance, omitted and ignored, while the board was making an assessment which it had jurisdiction to make under the laws of the state. This action resulted in an illegal discrimination which, under these facts, was the action of the state through the board. *Barney* v. *New York*, 193 U. S. 430, 48 L. ed. 737, 24 Sup. Ct. Rep. 502, holds that where the act complained of was forbidden by the State Legislature, it could not be said to be the act of the State. Such is not the case here."

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 36-37; 53 L. ed. 87.

The controlling fact in this case was that the State Board of Equalization did not exercise its judgment, but departed therefrom and knowingly made an arbitrary assessment which placed upon the taxpayer an excessive and unjust burden, as compared with the assessments by local assessors and other assessments by the State Board of other property of the same class as classified by the Constitution. What caused the board to so act, and whether there were other remedies that might have been exhausted under the laws of the State, were not considerations which entered into the decision, but such questions were argued in the briefs of appellant. The emphasis which we shall see was put upon the fact that the discrimination was uniform in the diverse action of different assessing bodies, merely recognized that such uniformity overcame the presumption of honest, if mistaken judgment, which the Court might otherwise indulged; but the Court did not mean to imply that a single act of taking the property of a citizen through arbitrary State action would not find a remedy in the original jurisdiction of federal courts.

It will be observed from the last preceding quotation from the *Raymond case* that it was assumed in argument by the Court that property may be classified and franchises assessed on one basis while tangible property is assessed upon another. In this assumption the court

was in error and doubtless for the moment did not have in mind the provision of the Constitution of Illinois which forbids classification of property for assessment except as specifically otherwise provided by the Constitution.

By reference to the dissenting opinion of Justice Holmes in the Raymond case, it will be observed that he argued the position that is now assumed by counsel for appellants, namely that there were remedies at law under the statutes of Illinois which oust the federal court jurisdiction to enforce the Constitution of the United States in the exercise of its original jurisdiction, but the court held the contrary view.

It is true that in the case of Taylor v. Louisville & Nashville R. Co. 31 CCA 537, the United States Circuit Court of Appeals in considering whether there was equity jurisdiction in the District Court seemed to assume, as we think, improperly, that if there were state remedies at law a United States Court would be deprived of its equitable jurisdiction, but held that a proceeding by Writ of Certiorari was not such a remedy, and, therefore, that the complainant might have had the tax record reviewed by Writ of Certiorari did not deprive the Court of equity of jurisdiction. As we understand the opinion in that case, however, the remedy by certiorari was supposed to be in the Federal Courts.

Here there is no state remedy to review the action of the State Board of Equalization, and the only remedy to review the action of the Tax Commission is by an appeal in the nature of Certiorari by which the legality of the assessment could be questioned upon such record as the Tax Commission may be willing to certify. So, such remedy would under the authority in the Taylor case be held inadequate. Moreover, as we shall show when we discuss another branch of this question, this court has since established beyond controversy that whether there are state remedies is wholly immaterial.

In the recent case of Greene v. Louisville & Interurban R. Co., this Court upon a similar state of facts sustained the doctrine of the Raymond case and held that diversity of method as between a state taxing board and the local assessing bodies in method of assessment resulting in a grossly excessive valuation for taxation of the property of that class of taxpayers assessed by the State Board as compared with those assessed by local assessors is a denial of due process of law and of equal protection of the law in violation of the Fourteenth Amendment to the federal Constitution. The material facts stated by the Court in its opinion in the Louisville & Interurban Railroad Company case, are essentially the same as those stated in the bill in this case, and the question was raised there by motion to dismiss

which directly contested the want of federal jurisdiction because no federal question was involved, which was held by the Court to amount to a general demurrer.

The essentials of the tax laws of Kentucky are the same as they are in this State. This is admitted by the brief of counsel for Appellants, except it is contended there is a material difference between the remedies for the enforcement of tax collection in Kentucky as compared with such remedies in Illinois, which we shall show later is not the case. Therefore, with respect to the question we are now considering and with that possible exception it is practically agreed that the Greene case is on all fours with the case at bar. We think, however, an examination of the bill in this case will disclose that it states a much stronger case than the Greene case. Discussing the pertinent question of federal jurisdiction this Court said:

> "The principle is not confined to the maintenance of suits for restraining the enforcement of statutes which, as enacted by the State Legislature, are in themselves unconstitutional. *Regan* v. *Farmers' Loan & T. Co.*, 154 U. S. 362, 390, 38 L. ed. 1014, 1021, 4 Inters. Com. Rep. 560, 14 Sup. Ct. Rep. 1047, was a case not of an unconstitutional statute, but a confiscatory, and therefore unconstitutional, action taken by a state commission under a constitutional statute. The court, by Mr. Justice Brewer, said: 'Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal Court of

jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual.' In Raymond v. Chicago Union Traction Co. 207 U. S. 20, 38, 52 L. ed. 78, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757, the Court upheld the right of action in a Federal Court to restrain the collection of taxes that had been assessed at a different rate and by a different method from that employed with respect to other taxpayers of the same class, in defiance of the provisions of a constitutional statute that required equalization, and also in denial of the equal protection of the laws within the meaning of the 14th Amendment."

Greene v. Louisville & I. R. Co., 244 *U. S.* 507.

In the case of Magnolia Bank v. Board of Supervisors the question here involved was discussed, and it was held that under the peculiar language of the Constitution of the State of Mississippi the principle under discussion could not be applied for the reason that the Mississippi constitution authorizes classification for the purposes of assessment and does not require that all property be assessed upon an equal and uniform basis, but the principle we contend for was sustained, as applicable under

a constitution requiring equality and uniformity in the assessment of all property by valuation.

Magnolia Bank v. *Board of Supervisors of Pike County*, 111 Miss. 857; 3 A. L. R. 1265.

Appended to the report of this case in the A. L. R. is an elaborate note which discusses this question and cites the authorities sustaining federal jurisdiction in such cases and holding that where there is an arbitrary assessment resulting from wilful discrimination or gross overvaluation systematically employed such an assessment is a denial of due process of law and equal protection of the law in violation of the Fourteenth Amendment.

The last case to recognize this doctrine is Keokuk & Hamilton Bridge Company v. Salm, reported in 256. U. S. 122, in which the federal claim was stated in the bill in very general terms but held sufficient to sustain the federal jurisdiction of the court. The bill was dismissed on a motion which amounted to a general demurrer for want of equity. The opinion recognized and admitted the authority of the Raymond and Green cases, and limited its authority to the question of equity jurisdiction. We shall again refer to this case when we come to answer directly the positions of counsel for Appellants.

(b) DEPARTURE FROM THE RULE OF THE ILLINOIS CONSTITUTION AND STATUTES IN MAKING ASSESSMENTS IS DENIAL OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW.

It is now a well settled doctrine of this Court that where a State taxing board wilfully departs from the method of assessment and valuation prescribed by the Constitution and laws of a State requiring a uniform basis of assessment to the injury of taxpayers, such departure is a denial by the State of due process of law and the equal protection of the law; that such departure is itself conclusive evidence that the Board is not following the due process of law provided by the Constitution and laws of the State and their action is the action of those who betray their trust and use their official positions to oppress others; and, therefore, the State cannot justify their acts against attack in a Federal Court by the claim that they were violating its constitution and laws and not acting as its agent.

In the case of Ex parte Virginia, 100 U. S. 339, this Court said:

> "They, (the words of the Fourteenth Amendment here involved), have reference to the state actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The Constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. **Whoever, by virtue of public positions under a State government, deprives an-**

> other of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the Constitutional inhibition; and as he acts in the name of and for the State, and is clothed with the State's power, his act is that of the State. This must be so or the Constitutional inhibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."
>
> McGehee on Due Process of Law, p. 27;
> *Ex. p. Virginia*, 100 U. S. 339;
> *Hovey* v. *Elliott*, 167 U. S., 409.

The same principle was emphasized by the late Judge Grosscup in these words:

> "The sum of it all is that by whatsoever causes brought about the reassessment complained of did not in our opinion express the real judgment of the State Board as an independent tribunal and were, therefore, in effect fictitious judgments for the impeachment of which, somewhere, the law holds out opportunity to the parties injured."
>
> *Chicago Union Traction Co.* v. *State Board of Equalization*, 114 Fed., 565.

He held that such opportunity was found in the original equity jurisdiction of the United States Circuit Court by injunction after the payment of tax equitably due.

In the Home Telephone Case all of the adverse dicta of this Court was considered and the principle established beyond controversy that where public officers depart

from the discharge of their duties under the law of a State and their unlawful action results in injury to a citizen that citizen may appeal to federal courts and claim the protection of the federal constitution, that the action of such public officers will be regarded as the action of the State, and that there may be a remedy under State law for the unlawful action is wholly immaterial.

Home Telephone & Telegraph Co. v. *Los Angeles*, 227 U. S. 286; 57 L. ed. 514-515.

(c) ONLY NECESSARY TO PRESENT A FEDERAL QUESTION TO GIVE JURISDICTION.

If federal question is in good faith presented by pleadings that confers original jurisdiction, and even if upon demurrer, motion to dismiss, or a trial of the cause, it should occur that the claim of a federal question should be decided adversely to the plaintiff or complainant, that should not result in a dismissal of the cause, or adverse decision of the merits, if on the merits of the whole case the moving party is entitled to relief.

Jurisdiction of federal courts is sufficiently established if the title or right set up may be defeated by one construction of the Constitution and Laws of the United States and sustained by an opposite construction.

Osborne v. *U. S. Bank*, 9 Wheat (U. S.) 739-822;
Bors v. *Reston*, 111 U. S. 258; 26 L. ed. 421;
Kansas Pacific v. *Atchison R. R. Co.*, 112 U. S. 416; 28 L. ed. 795;

Pacific R. R. Co., Removal Cases, 115 U. S. 11-15; 29 L. ed. 323;
U. S. v. *Old Settlers*, 148 U. S. 469; 37 L. ed. 524.

If a controversy under the Constitution of the United States arises under a pleading it is immaterial whether that question is held decisive of the case. If decided adversely to the plaintiff it would nevertheless be the duty of the Court to proceed to a final consideration of the case upon the merits of all the questions presented.

This question was raised in the case of *Green* v. *Louisville & Interurban R. Co.*, 244 U. S. 499; 61 L. ed. 1281, where it was said:

> "The contention of plaintiffs, set forth in their respective bills of complaint, and the action of the Board of Valuation and Assessment in making the assessments under consideration and the threatened action of defendants in respect of carrying those assessments into effect constituted action by the State and if carried out would violate the equal protection provision of the 14th Amendment, presents without question, a real and substantial controversy under the Constitution of the United States, which (there being involved a sum and value in excess of the jurisdictional amount) conferred jurisdiction upon the Federal Court, irrespective of the citizenship of the parties. This being so, the jurisdiction of that Court extended, and ours on appeal extends, to the determination of all questions involved in the case, including questions of State law, irrespective of the disposition that may be made of the Federal question, or whether it be found neces-

sary to decide it at all. *Silver* v. *Louisville & N. R. Co.*, 213 U. S. 175, 191, 53 L. ed. 753, 757, 29 Sup. Ct. Rep. 451; Ohio Tax Cases, 232 U. S. 576, 586, 58 L. ed. 732, 743, 34 Supt. Ct. Rep. 372."

It turned out that the court in this case declined to pass upon the question whether the action restrained was in violation of the Fourteenth Amendment to the Federal Constitution, yet jurisdiction was retained and the cause finally disposed of by the Supreme Court of the United States. Beginning on page 681, the Court said:

> "The next question in order is whether the assessments have the effect of denying to plaintiffs the equal protection of the laws, within the meaning of the 14th Amendment. It is obvious, however, in view of the result reached upon the question of State law, just discussed, that the disposition of the case would not be affected by whatever result we might reach upon the Federal question; for no other or greater relief is sought under the 'equal protection' clause than plaintiffs are entitled to under the provisions of the Constitution and laws the State to which we have referred. **Therefore, we find it unnecessary to express any opinion upon the question raised under the 14th Amendment.**"

Numerous previous cases from the Supreme Court of the United States announce the same doctrine.

It is clearly laid down in *City Railway Co.* v. *Citizens Railroad Company*, 166 U. S. 557. On page 562, in the above case, Justice Miller said:

"There can be no doubt that the Circuit Court had jurisdiction, notwithstanding the fact that both are corporations of the State of Indiana. It should be borne in mind in this connection that jurisdiction depended upon the allegations of the bill and not upon the facts as they subsequently turned out to be. * * * The gravamen of the bill is that * * * the Citizens Railroad Company had become vested with certain exclusive rights in the city of Indianapolis either in perpetuity or for the term of thirty or thirty-seven years, which the city had attempted to impair by entering into contract with the City Railway Company to lay and operate a railway upon the same streets. All that is necessary to establish jurisdiction of the court is to show that the complainant had or claimed in good faith to have a contract with the city which the latter had attempted to impair."

To the same effect is the decision in *Penn. Mutual Ins. Co.* v. *Austin*, 168 U. S. 685-695:

"The contention here made, however, is, not that the bill without color of right alleges that the state law and city ordinances violate the Constitution of the United States, but that such claim as alleged in the bill is unsound. The argument then is that the right of direct appeal to this court does not exist where it is claimed that a state law violates the Constitution of the United States unless the claim is well founded. But it can not be decided whether the claim is meritorious without taking jurisdiction of the case."

This same distinction was also clearly made by Mr. Justice Day when he was on the Circuit Court in *Louisville Trust Co.* v. *Stone*, 107 Fed. 305. On page 309 therein he said:

> "Notwithstanding the failure of the complainant to establish its relief upon the ground of Federal jurisdiction, alleging that the unjust discrimination against it in assessing its property at its full value while other property in the State was assessed at 70 percent. of its face value, thus depriving complainant of the equal protection of the laws under the Fourteenth Amendment, the jurisdiction of the Court having been invoked for that purpose the bill may be retained to administer full relief concerning the assessment upon the property of complainant upon the ownership of stock in the Mattingly Company. **If the claim to relief, clearly within the Federal jurisdiction, is fair and colorable not fictitious and fraudulent, jurisdiction attaches, although the ultimate decision may be against the right claimed.**"

Judge Clark draws the same distinction in *Louisville & Nashville etc., Ry. Co.* v. *Taylor*, 86 Fed. 168-178:

> "Whether there is a claim which presents a federal question, and whether that claim is well-founded are different and distinct questions. The one goes to jurisdiction and the other to the merits of the case. It is true that questions must be raised, and it is equally true that the court must take jurisdiction before it can determine whether the right is valid or well founded."

The authorities we have cited in this division of the argument make it apparent there was no substantial ground upon which appellants could have based any contention in the District Court, that the allegations of the bill were insufficient to confer federal jurisdiction. It is therefore not surprising that on the second motion to dismiss, that question was not raised, and was expressly waived on page 56 of appellant's original brief.

II.

DOES THE BILL SHOW ON ITS FACE THAT THE COMPLAINANTS ARE ENTITLED TO RELIEF IN A COURT OF EQUITY?

This question requires a consideration of the allegations of the bill. It is alleged that the arbitrary and wilful action of the State Board of Equalization and the Tax Commission in making the assessments of complainants property was fraudulent and, therefore, void. That is relied upon as a ground of equity jurisdiction, but the facts relating to fraud have been sufficiently stated in the preceding division of this argument and will not be repeated at this point. There are two other distinct grounds of equity jurisdiction fully appearing from the allegations of the bill to which special attention has not been drawn, namely, to avoid a multiplicity of suits, and the inadequacy of the procedure in a court of law to make the adjustments and state the account necessary in order to enable the court to arrive at the amount of taxes due the several municipalities and taxing districts of the several counties and the ascertainment of what tax is il-

legal and not due both on account of the overvaluation by the Board and Commission and the mistakes and excesses of Constitutional and statutory limitations in levying the taxes which rendered the same illegal and void; and against which this bill was directed as well as against the excess of taxes caused by over-valuation; of these in order stated.

(a) THE ASSESSMENTS MADE BY THE BOARD OF EQUALIZATION AND THE TAX COMMISSION ARE FRAUDULENT, AND FOR THAT REASON THE PUBLIC AUTHORITIES MAY BE RESTRAINED FROM ENFORCING THEM.

The principle is established both by the decisions of the Supreme Courts of Illinois and of the United States that the collection of taxes may be restrained if based upon a fraudulent assessment, and that is in accord with the principles stated in the elementary works treating of equity juprisdiction. Mr. High in his work on Injunctions says:

> "Notwithstanding the well established as above discussed, denying any supervisory power in courts of equity to revise the action of boards of review or equalization charged with the duty of revising and equalizing valuations and asessments, there have been instances of equitable interference by injunction to prevent the enforcement of taxes based upon such arbitrary, illegal or oppressive action upon the part of these boards as to amount to a fraud against the taxpayer, or to threaten a cloud upon his title, thereby bringing the case within the established jurisdiction of courts of equity. And where a State board

for the equalization of taxes undertakes to fix valuations upon taxable property through prejudice or a reckless disregard of duty, and makes a grossly arbitrary and unreasonable valuation, an injunction is regarded as the appropriate remedy."

I. High on Injunctions, Sec. 494.

That if a Board of Equalization or Assessment is guilty of fraud in assessing or equalizing the value of property upon which taxes are to be extended, equity will restrain the collection of the tax has been held and applied under various circumstances and without exception where equity has been resorted to in the first instance. Thus,

"Whenever the board undertakes to go beyond its jurisdiction, or to fix valuations through prejudice or a reckless disregard of duty, in opposition to what must necessarily be the judgment of all persons of reflection, it is the duty of the courts to interfere and protect taxpayers against the consequences of its acts."

The C. B. & Q. R. R. Co. v. *Cole*, et al., 75 Ill. 591.

Where an assessor changes an assessment after he has accepted a list, injunction will restrain a collection of the tax.

Cleghorn v. *Postlewaite*, 43 Ill. 428.

If the property is assessed fraudulently at too high a rate injunction will lie and the **remedy is cumulative to other legal remedies.**

I. C. R. R. Co. v. *Hodges*, 113 Ill. 323.

Equity jurisdiction attaches where the tax is fraudulently levied.

Du Page County v. *Jenks*, 65 Ill. 275.

In cases where there is fraudlent valuation of property for assessment the tax payer has an election in cases where there is also remedy at law as to whether he will pursue the remedy at law or his remedy in equity.

Carr v. *Arnold*, 239 Ill. 40.

In a large number of cases in this State where taxes based upon alleged fraudulent assessments and equalizations by the State Board of Equalization were about to be enforced through suits to enforce tax liens upor property the courts of this State have sustained injunctions to restrain the collection of such taxes both upon the ground of fraud and multiplicity of suits.

People v. *Hibernia Bank*, 345 Ill. 528;
Calumet Dock Co. v. *O'Connell*, 265 Ill. 106;
Calumet Dock Co. v. *Stuckart*, 276 Ill. 253;
Peoples Gas Light & Coke Co. v. *Stuckart*, 285 Ill. 164.

The same principle has been sustained in a large number of federal cases in the United States Supreme Court.

Davis v. *Gray*, 6 Wall. 220; 21 L. ed. 453;
Louisiana v. *Jumel*, 107 U. S. 758; 27 L. ed. 465;
Cunningham v. *Macon & B. R. R. Co.*, 109 U. S. 455; 27 L. ed. 993;

Pennoyer v. *McConnaughy*, 140 U. S. 10-18; 35 L. ed. 362;
Osborne v. *U. S. Bank*, 9 Wheat. (U. S.) 739;

This principle has been applied in a number of cases in which it was charged that the fraud of the taxing officers consists in the assessment for taxation of one class of property at a higher rate than another through a system adopted in violation of constitutional and statutory provisions requiring the taxation of all classes of property so that each would pay a tax in proportion to its fair value, or so that each person and corporation would pay a tax in proportion to the fair cash value of his, her or its property.

Raymond v. *Union Traction Co.*, 207 U. S. 20; 52 L. ed. 78;
Green v. *Louisville Interurban Co.*, 244 U. S. 499-521; 61 L. ed. 1280.

In the Raymond case it was said:

"We are also of the opinion that the case is one over which equity has jurisdiction. In *Cummings* v. *Merchants Nat. Bank*, 101 U. S. 153, 25 L. ed. 903, this court held that the case was one properly brought in equity. It was to restrain the collection of a tax. While the court held that the position of the bank as trustee entitled it to maintain an action in equity and also under the statute of Ohio, it was further held (page 157): 'Independently of this statute, however, we are of the opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental prin-

ciple of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power.' We have in the case at bar similar facts. A system of valuation was adopted and applied to a large class of corporations, differing wholly to that applied to other corporations of the same class, and resulting in a discrimination against the appellee of the most serious and material nature. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind. Although the law itself may be valid and provide for a proper valuation, yet if through mistake on the part of the State, through its board of equalization, and while acting as a quasi-judicial body, the board erred in the method to be pursued in relation to the corporations now before us, the mistake is one which may be corrected in equity."

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20; 52 L. ed. 78.

"A court of equity has jurisdiction of suits to enjoin action looking to the enforcement of taxes upon the intangible property of public service corporations assessed under state authority, upon the ground of discrimination in valuation arising out of systematic undervaluation of other taxable property, where the bills assert that the unauthorized illegal valuation constitutes a cloud and a lien upon the plaintiff's property, and that, unless restrained, numerous and vexatious suits will be instituted to

foreclose such lien, together with civil, penal, or criminal proceedings based upon plaintiff's supposed delinquency in the payment of taxes."

Green v. *Louisville & Interurban R. Co.*, 244 U. S. 499; 61 L. ed. 1280.

What is here said applies as well to the method of collectiong taxes in Illinois, except that Illinois law provides no criminal remedy to enforce payment of taxes, and that differences, we submit, is immaterial.

(b) IT IS NOT NECESSARY THAT THERE SHOULD BE ACTUAL FRAUD IN ORDER TO RENDER THE ASSESSMENT INVALID; IF THERE IS CONSTRUCTIVE FRAUD, THAT IS AS EFFECTIVE TO VITIATE THE ASSESSMENT AS ACTUAL FRAUD.

Mr. Story says:

"Having thus considered some of the most important cases of actual, or meditated and intentional fraud, in which Courts of equity are accustomed to administer a plenary jurisdiction for relief, we may now pass to another class of frauds, which, as contradistinguished from the former, are treated as legal or constructive frauds. By constructive frauds are meant such acts or contracts, as, although not originating in any actual evil design, or contrivance to perpetuate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private of public confidence, or to impair or injure the public interests, deemed equally reprehensible with positive fraud, and, therefore, are prohibited by law, as within the same reason and mischief, as acts and contracts done malo animo. Although, at first view, the doctrines on this subject,

may seem to be of an artificial, if not of an arbitrary character; yet, upon closer observation, they will be perceived to be founded in an anxious desire of the law to apply the principle of preventive justice, so as to shut out the inducements to perpetrate a wrong, rather than to rely on mere remedial justice, after a wrong has been committed. By disarming the parties of all legal sanction and protection for their act, they suppress the temptations and encouragements, which might otherwise be found too strong for their virtue."

"Some of the cases under this head are principally so treated, because they are contrary to some general public policy, or to some fixed artificial policy of the law. Others, again, rather grow out of some special confidential or fiduciary relation between all the parties or between some of them, which is watched with especial jealousy and solicitude, because it affords the power and the means of taking advantage, or of exercising undue influence over others. And others, again, are of a mixed character, combining, in some degree, the ingredients of the preceding with others of a peculiar nature; **but they are chiefly prohibited, because they operate substantially as a fraud upon the private rights, interests, duties, or intentions of third persons, or unconscientiously compromise or injuriously affect the private interests, rights, or duties of the parties themselves.**"

I. Story's Equity Jurisprudence 10th ed. secs. 258-259.

"Where the thing generally results in injury and is contrary to equity or legal duty it is a constructive fraud."

Moore v. *School Trustee*, 19 Ill., 82.

"The law has a standard for measuring intent of parties and declares an illegal act prejudicial to the rights of others, a fraud upon such rights although the party denies all intention of committing a fraud."

Kirby v. *Ingersoll*, Har. 172.

"Constructive fraud consists in any act of ommission or commission contrary to legal or equitable duty, trust or confidence justly reposed which is contrary to good conscience. The former (actual fraud) implies moral guilt. The latter may be consistent with innocence."

Conyers v. *Graham*, 81 Ga. 615; 8 S. E. 521.

"A constructive fraud is an act which the law declares to be fraudulent without inquiring into the motive; but because arbitrary rules on the subject have been laid down or because the act carries in itself irresistible evidence of fraud."

McBroom v. *Rives*, 1 Stewart 72.

(c) FRAUD, THOUGH NOT EVIL INTENT.

In *Green* v. *Louisville & Interurban R. Co.*, 244 U. S. 499, it is said:

"If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the full assessed property. And this is

true although the particular board assessing the complainant's property may have been wholly free from fault of fraud or intentional discrimination."

These authorities conclusively established that the allegations of the bill on the subject of fraud are sufficient to entitle the complainants to equitable relief. The default admits these allegations to be true, and, therefore, the bill should be sustained upon this ground.

(d) THE ALLEGATIONS OF THE BILL UNDER THE LAW OF ILLINOIS, OF WHICH THE COURT MUST TAKE JUDICIAL NOTICE, ARE SUFFICIENT TO SUSTAIN EQUITY JURISDICTION TO AVOID A MULTIPLICITY OF SUITS.

The ground that there is equity jurisdiction to avoid a multiplicity of suits is based upon the facts:

(a) That if the complainants had permitted tax proceedings to be brought against them they would have been liable to five several suits in separate counties to be tried by five separate tribunals local and subordinate in their nature and no relief could have been hoped for short of an appeal to the Supreme Court of the State requiring five separate appeals which might or might not have all been in the Supreme Court at the same time and that would have involved five original trials and five separate trials in the Supreme Court. There could have been no consolidation of these cases in the Supreme Court because the illegal tax complained of in the several counties would have involved entirely different questions respecting the levy and extension of the taxes.

(b) The Defendants, except Abbott, and the property would have been liable to these various proceedings:

(1) To be sued in actions of debt for the taxes which fell due while they were in custody of the property.

(2) To have their property destrained for the payment of such taxes under the warrant attached to the railroad tax book.

(3) Personal property described in the bill would in addition to proceedings for delinquent taxes in the County Court, and an action of debt for the recovery of taxes have been liable to destraint and sale without any judicial proceeding for all taxes which accrued during the four year period, on both personal and real property.

(4) If the complainants had paid the tax under protest and sought to recover it back, it would have been necessary to either restrain the collector of each county from paying the tax over to the municipal officers of the several taxing districts or follow the tax and bring separate suits against, under the averments of the bill, an average of fifteen separate sets of officers of cities, villages and other taxing districts in each county for the recovery of the tax.

The allegations bringing this case within the principle that equity will take jurisdiction to avoid a multiplicity of suits are that a separate suit would be brought

in each county and that if the tax should be paid under protest as to the State it could not be recovered back, and after it is distributed as required by law a great number of suits involving substantially like questions of law and fact and an expense entirely disproportionate to the amount to be recovered from each taxing district would be required.

This allegation is similar to that held sufficient in a number of Illinois cases. In the case of Raymond v. Union Traction Company, in which a similar suit as this was brought in the United States Circuit Court, it was said:

> "In the case at bar it is averred that it is the duty of the collector, having received the money on his warrant, to pay the sum so received in the proportions designated in his tax books to the city treasurer of the City of Chicago, the county treasurer of the county of Cook, the treasurer of the Sanitary District, and other officers and authorities entitled to receive the same, and if the plaintiff instituted suit to recover back the tax so paid to the town or county collector he would be obliged to bring separate suits against each one of the several taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would come to the State of Illinois could not be collected back by any legal proceeding whatsoever; and if repayment could be compelled from the city of Chicago and other taxing bodies, such repayment would not cover the cost, including commission deducted for the collection of the tax."

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20-41; 52 L. ed. 78.

A similar allegation was sustained in the case of Green v. Louisville & I. R. Co., in which a suit was brought to restrain the collection of a tax through the enforcement of tax liens where it was also charged that the assessment was in violation of the Fourteenth Amendment to the Federal Constitution and fraudulent.

Chicago Union Traction Co. v. *State Board of Equalization*, 114, Fed. 557;
Greene v. *Louisville & I. R. Co.*, 244 U. S. 499-521; 61 L. ed. 1280.

Similar suits were brought and sustained in the following Illinois cases:

People v. *Hibernia Bank*, 245 Ill. 528;
Calumet Dock Co. v. *O'Connell*, 265 Ill. 106;
Calumet Dock Co. v. *Stuckart*, 275 Ill. 253;
Peoples Gas Light & Coke Co. v. *Stuckart*, 286 Ill. 164.

These cases are in accord with the rule laid down in the works on Equity Jurisdiction. After stating the rule which was originally applied allowing a suit to be sustained in equity to avoid a multiplicity of suits only where there was a common right or community of interest in the subject matter of the controversy or a common title from which all their separate claims and all the questions at issue arise the general rule established by the weight of authority was stated by Mr. Pomeroy as follows:

"This early theory has, however, long been abandoned. The jurisdiction, based upon the prevention of a multiplicity of suits, has long been extended to other cases of the third and fourth classes, which are not technically 'bills of peace,' but 'are analgous to' or 'within the principle of' such bills. Under the greatest diversity of circumstances, and the greatest variety of claims arising from unauthorized public acts, private tortuous acts, invasion of property rights, violation of contract obligations, and, notwithstanding the positive denials by some American courts, the weight of authority is simply overwhelming that the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no 'common title' nor 'community of right' or of 'interest in the subject matter,' among these individuals, but where there is and because there is merely a community of interest among them in the question of law and fact involved in the general controversy, or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body. In a majority of the decided cases, this community of interest in the question at issue and in the kind of relief sought, has originated from the fact that the separate claims of all the individuals composing the body arose by means of the same unauthorized, unlawful or illegal act or proceeding. Even this external feature of unity, however, has not always existed, and is not deemed essential. Courts of the highest standing and ability have repeatedly interfered and exercised this jurisdiction, where the

individual claims were not only legally separate, but were separate in time, and each arose from an entirely separate and distinct transaction, simply because there was a community of interest among all the claimants in the question at issue and in the remedy."

1. Pomeroy Equity Jurisprudence, p. 500, pars. 268-269.

The authority of Mr. Pomeroy has been approved and adopted by the Supreme Court of Illinois as the existing law of this State in the following cases:

North American Ins. Co. v. *Yates*, 214 Ill. 283;
City of Chicago v. *Collins*, 175 Ill. 445;
German Alliance Ins. Co. v. *Van Cleave*, 191 Ill. 410;
City of Chicago v. *Chicago City Ry.*, 222 Ill. 576.

Cited in the notes under Sections 268 and 269 of Pomeroy's Equity Jurisprudence, 4th Ed., Volume 1, will be found a very large number of federal cases as well as cases decided by the courts of last resort of the various states of the union settling the modern law in relation to when a court of equity will intervene to avoid a multiplicity of suits, and sustaining the text of Mr. Pomeroy.

The law is now well settled both in state and federal jurisdiction that where it is necessary to prevent the inconvenience and expense of a number of suits at law, and the questions involved are of a similar nature or relate to the same matter, or some part of the claim is of an equitable nature or can be more adequately litigated

in a Court of Equity, a Court of Equity will take jurisdiction to avoid a multiplicity of suits. This comes through the natural development of equity jurisdiction from original principle as shown by Mr. Pomeroy and there can be no doubt that the allegations of this bill show that a multiplicity of suits was avoided by the bringing of this bill. It will be remembered that no suits were in fact brought before the bill was filed as shown by its allegations. Under the law of Illinois the suits immediately restrained would have been instituted by applications for judgment in the nature of proceedings *in rem*, which a preliminary injunction prevented.

We have discussed this question at this point as though a remedy at law under the constitution and laws of the State of Illinois is such a remedy as can be regarded by a federal court as an adequate remedy to deprive a federal court of jurisdiction in equity. Such, however, is not the case as we shall show when we come to reply to the contentions of counsel for Appellants.

(c) ONE OF THE WELL ESTABLISHED HEADS OF EQUITY JURISDICTION IS THAT, IF IN ORDER TO DO JUSTICE BETWEEN THE PARTIES, IT IS NECESSARY TO ENTER UPON AN INVOLVED OR COMPLICATED ACCOUNTING, WHICH CANNOT BE EFFICIENTLY AND ADEQUATELY DONE IN A COURT OF LAW BEFORE A JURY, EQUITY WILL ASSUME JURISDICTION FOR WANT OF AN ADEQUATE REMEDY AT LAW.

The bill alleges and shows that a Court of law could not have tried the issues involved in this case as efficiency and adequately as a Court of equity, because of the com-

plication and difficulty of the accounting necessary to determine the amount of taxes due the several taxing districts, the amount of taxes overcharged on account of excessive valuation and the illegal taxes charged in violation of specific provisions of the Constitution and laws of Illinois, by ignoring statutory requirements, and exceeding constitutional and statutory limitations in making levies.

We assert this without trepidation, notwithstanding the suggestion of counsel for Appellants that Appellees' counsel is too good a lawyer to contend that there is equity jurisdiction in this case. Because of the complication of the accounting shown to be necessary by the allegations of the bill, the specific difficulties which could not have been overcome or avoided in a Court at law are these:

(1) There could have been no tender as in equity, nor offer in a suit of law to pay such taxes as are equitably due, because that could not have been determined in a preliminary way by an interlocatory order.

(2) The suit at law would have had to be a contest of the validity of the entire tax, or the detail of tax rate making and extension would have had to be gone into before a jury.

(3) A jury could not have determined by an application of the rules in relation to the valuation and as-

sessment of property, the tax rates, the amount of tax to be extended, or the proportion of the amount of tax charged in the aggregate equitably due the several taxing districts and that overcharged against the complainants.

(4) A jury would not have been competent to ascertain whether the several taxes which the bill alleges were illegal on account of existing constitutional and statuary limitations and overcharges were in fact improperly charged against the property, nor the amount of such separate overcharges; nor could an issue have been formed at law in relation to these several items upon which the verdict of a jury might be taken, and if such issues had been practical they would have been so complicated and numerous that a suggestion of an accurate decision thereof by a jury on the several items is too absurd to think of attempting.

(5) Paragraphs 360-364 of the Revenue Laws of Illinois, (Cahill's Illinois Statutes, 1923, p. 2908-2911,) provide the manner of ascertaining the rate of taxation in each of the taxing districts by the application of what is known as the Juul Law through which on a statutory basis the rates of taxation ascertained from the applications of the levies of the several taxing districts must be reduced arbitrarily in order to effect a statutory equality

based upon the amounts of the several levies and controlled by the maximum levies allowed by constitution and by statutory limitations.

There is, perhaps, not an average of more than one person to a county in the State of Illinois, liable to jury service, sufficiently acquainted with the revenue laws of the State to apply accurately these statutes and ascertain whether there is or is not an excess of tax charged against property in any taxing district. This method applies to a large class of taxing districts in each of these several counties and to assume that questions of that sort can be tried in a court of law is unreasonable. That all of these questions could be tried in a court of equity and correctly decided there is beyond controversy.

An examination of the complainants' bill, which contains separate statements of the several kinds of taxes charged in the several taxing districts in each of the counties, amount of tax extended, the items of illegal tax and the tax admitted to be due, occupy fourteen pages of the bill. These were prepared by a tax expert, as the bill alleges, who went over the entire data and constructed these tables. It was an easy matter for the court below to enter a decree on default for the amount of tax admitted to be due and restrain the collection of that which their bill alleges is illegal and excessive, but had there been a denial of the allegations then, we sub-

mit, there would have resulted one of the most complicated proceedings in accounting before a Master or Referee that could be imagined.

The nature of the accounting in order to ascertain how much tax is due to each of the said several taxing districts under the allegations of the plaintiffs' bill is shown in detail by the bill, and one of the prayers of the bill is the ascertainment of the amounts due respectively and a decree for the payment of the same.

In order to facilitate the adjustment of the accounts the plaintiffs have employed an expert who has prepared schedules stating the amount due respectively to each of the taxing districts and this is averred and the schedules made a part of the bill. This alone is ground for a Court of Equity to take jurisdiction.

It is said, where it would be difficult if not impossible for a jury to unravel the numerous transactions involved and justice could not be done, except by employing the methods of investigation peculiar to Courts of Equity, equity has jurisdiction.

I. Corpus Juris, p. 619, sec. 64;

II. Story Equity Jurisprudence, 14th Ed., p. 8, sec. 591;

IV. Pomeroy Equity Jurisprudence, sec. 2357.

The authorities cited, we insist, establish the equity jurisdiction of this cause under the allegations of the bill upon the three specific grounds of fraud, to avoid a multiplicity of suits, and because in view of the peculiar allegations of the bill, the nature of the proof and the want of any other method of making an adjustment of the taxes due, no legal remedy could be adopted, if one had existed, and none existed. This is especially true in view of the fact that relief could only be had by the payment of the taxes admitted to be due, and the necessity of determining that question in a preliminary way before perpetually restraining the collection of the illegal and excessive tax.

III.

REPLY TO ARGUMENT OF APPELLANTS.

It is conceded by counsel for Appellants that the motion to discuss admitted the allegations of the bill, and that the sufficiency of the bill must be decided by its allegations. This is in part true and in part a misconception. In this Court the motion to dismiss can be considered as having put in issue only those allegations which it disputed. In other words, the motion to dismiss specified its grounds and cannot be broadened to include anything not specified. This is a principle so well-estab-

lished by authority that it is hardly necessary to cite Court decisions in its support, but is illustrated by these cases:

West Chicago Street Ry. v. *Krueger*, 168 Ill. 586;
Odin Coal Co. v. *Tadlock*, 216 Ill. 624;
C. B. & Q. R. Co. v. *Bantsch*, 127 Ill. App. 23.

The motion to dismiss being limited to the ground that the bill on its face does not state a case in equity entitling the complainants to relief, or for want of equity on the face of the bill, that is the only question properly before the Court in this appeal. Nevertheless, we shall reply to all arguments made by counsel for Appellants without regard to that limitation, notwithstanding such limitation it clearly appears both from the record and from the admissions of counsel on page 56 of his brief.

He assumes to analyze the facts in the case of *Greene* v. *Louisville and Interurban R. Co.*, 244 U. S. 499, and compare the facts of that case with the facts of the case at bar. Since we have fully set forth the allegations of Appellees' bill in the statement a mere comparison of its allegations with the quotation therefrom beginning on page 20 will demonstrate what effort counsel has made to minimize its allegations, and if the Court will compare the quotation from the bill in the Greene case beginning on page 17 of Appellants' brief with the statement of the material facts that bill as gleaned therefrom by this Court and stated by Justice Pitney on page 504 of the

opinion in the Greene case, (244 U. S. p. 504), it will be seen how counsel for Appellants has labored to exaggerate the material averments of the bill in that case. This method was followed by quoting part of the prayer for relief from Appellees' brief, (Rec. p. 46), (p. 20 of Appellants' brief), omitting the general prayer for relief and that part of the prayer which asked for a decree restraining the collection of all of the excessive and illegal tax alleged to be charged against Appellants' property by the averments of the bill. It was also claimed that the decree of the Court was limited to restrain the defendants from making application to the County Courts for judgment against the lands of Appellants for delinquent taxes, and had no reference to tax on personal property. But reference to the decree will show that there were findings covering the whole case and a decree restraining the collection of any of the illegal taxes and making perpetual the preliminary injunction which broadly restrained the collectors of the several counties from collecting or attempting to collect any taxes alleged by the bill to be illegal. (Rec. pp. 81-85, 51-52.) These allegations relate to tax on personal property as well as real estate as the allegations of the bill plainly show.

This was all to create a back ground for the assertion that the county collectors of the several counties could not seize the property of defendants or prosecute

any suit other than an application for judgment for delinquent taxes upon the theory that all the tax alleged to be charged against Appellants' property was real estate tax, and, therefore, there could be no distraint for its collection, nor any collection made except after a judicial proceeding which counsel for Appellants seem to argue would be due process of law, and, that, therefore, there would be no right of action in a Federal Court of equity to restrain such proceedings.

We think the fallacy of this contention has already appeared to this Court, but it will be further emphasized by calling direct attention to the fact that all of the property described in paragraph 3 of complainants' bill, except that denominated "railroad track" is personal property which counsel admits is subject to destraint under Illinois law without first obtaining judgment of a court of law. That would render all of the property known as "rolling stock" and all other movable property described in Paragraph 3 of the bill subject to destraint and sale at the will of the several collectors of taxes for the taxes claimed to be due in each of the several counties; and, by deference to marginal numbers 4 to 10 and 23 to 30 pages 2 to 5 and 10 to 15 of the appendix it will be seen that the statutes of Illinois not only authorize such proceeding for the collection of personal tax, but for the collection of unpaid real property tax, and that other suits at law may be brought against taxpayers than pro-

ceeding against real property for delinquent taxes in County Court, so the final contention of counsel based upon his elaborate statements about distinctive features of Illinois tax law falls of its own weight.

Counsel for Appellants was even mistaken in his assertion that a proceeding against property for judgment for delinquent taxes is a suit at law within the ordinary meaning of that phrase. Such a proceeding is not a suit at law, but it is a summary statutory proceeding *in rem* against property to enforce a lien for taxes, on merely constructive notice to the tax payer.

Gage v. *Nichols*, 135 Ill. 134;
Gage v. *Busse*, 114 Ill. 387;
Gage v. *Lyons*, 138 Ill. 594;
Gage v. *People*, 188 Ill. 95;
Gage v. *Pumpelly*, 115 U. S. 454.

The provisions of the Revenue Law authorizing the collection of tax upon real estate from personal property are as follows:

Section 254. "The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the collector."

Section 255. "Personal property shall be liable for taxes levied on real property, and the real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in case of removals, or where the tax cannot be made out of the

personal property; but the tax on real property may be made out of personal property, at any time after the tax becomes due, by any collector having the tax books in his hands by distraint and sale, in the manner provided by this Act."

Cahill, Ill., Stat. 1923, p. 2884.

Section 161 of the Revenue Law continues in force the warrant for the collection of taxes attached to tax books, even after the return of the books as follows:

"The power and duty to levy and collect any tax due and unpaid, shall continue in and devolve upon the county collector and his successors in office, after his return and final settlement until tax is paid; and the warrant attached to the collector's books, shall continue in force and confer authority upon the collector to whom the same was issued, and upon his successors in office, to collect any tax due and uncollected thereon, although such books may have been returned, or the tax carried forward into any other book."

Cahill, Ill. Stat. 1923, p. 2864.

The Supreme Court of Illinois has held that taxes on personal property must be collected from personal property before they can be collected from real estate.

C. V. & C. v. *Mathews*, 152, Ill. 53.

But Section 255 just quoted from provides that judgment against real property for non-payment of taxes shall not be prevented by showing that the owner thereof was possessed of personal property subject to distraint,

and no person shall be subject to have his personal property distrained and sold for tax on real estate which may have been listed and assessed in his name when he makes oath or otherwise satisfies the collector that he did not own such real estate. This settles beyond controversy that the whole fabric of this argument of counsel for Appellants is based upon a false theory, and a misunderstanding of Illinois statutes.

We have demonstrated the total misconception of counsel for Appelants of the law of Illinois, and as to the supposed difference between the law of Illinois and of Kentucky upon which he predicates his whole argument on this branch of the case. These supposed differences are emphasized in order to give force and weight to the opinion of this Court in the Keokuk & Hamilton Bridge case which it does not possess, he claiming that the laws of Illinois are in the respect that he alleges different, but they are in fact substantially like the laws of Kentucky, and the taxes against which the bill is directed include the tax on all personal property of this railway company. Moreover this Court recognized no such distinction as he has been laboring so hard to establish in the Bridge case.

We shall now endeavor to show that aside from this his whole contention is untenable and contrary to the settled law as established by the decisions of this court.

The specific contention is that the assignment in the motion to dismiss that the bill shows on its face an adequate remedy at law deprived United States District Court of jurisdiction in equity, and, therefore, the overruling of the motion to dismiss by the District Court was vitally erroneous and that the Appellants are entitled to a reversal of the decree for that error. This contention is wrong in two essential particulars: (a) The alleged adequate remedy at law is not in the Federal Courts, (b) it is immaterial what remedies may exist under State laws.

The adequate remedy at law that will deprive a federal court of equity jurisdiction must exist in the federal courts, otherwise it is plain that on the theory of counsel for Appellants the federal courts could be deprived of all their original equity jurisdiction by providing legal remedies to which resort might be had in the several states, so this court has said:

> "An adequate remedy at law created by State statutes and available in State Courts cannot oust the Federal Courts of their jurisdiction in equity."
>
> *Smith* v. *Reeves*, 178 U. S. 436;
> *Smyth* v. *Ames*, 169 U. S. 466;
> *Mississippi Mills* v. *Cohn*, 150 U. S. 202;
> *Arrowsmith* v. *Gleason*, 129 U. S. 86.

> "It is an absence of an adequate remedy at law in the national courts and that alone which conditions jurisdiction in equity in those courts."
>
> *National Surety Co.* v. *State Bank*, 120 Fed. 593; 56 CCA 656; 61 L. R. A. 394.

"A Federal Court of equity following the chancery precedents does not inquire about the remedies available in the State Court,(which for this purpose is a foreign tribunal), but whether a **Federal Court of law** offered an adequate remedy; and this inquiry is confined to the remedies in the Federal Courts no matter how ancient may be the remedies offered by the State. Congress may, of course, change the federal remedies from time to time; the change may be made by original legislation or by adopting the remedies of the State, but the test is always whether the remedy under examination is available in the **Federal Courts.** If it is not, its existence does not affect the equitable jurisdiction of the Circuit Court."

Bordens Conds. Milk v. *Baker*, 177 Fed. 906; 101 CCA 186.

Whether there may be remedies in the State Courts which pursued would afford relief to one oppressed by taking his property without due process of law or denying him the equal protection of the law would not compel him to resort to and exhaust those remedies before appealing to the original jurisdiction of the United States Courts for relief, has been considered frequently by this Court, and some members of the Court, notably Justice Holmes in his dissenting opinion in the Raymond case, have tried to maintain that doctrine as counsel for appellants insist is the law of this case. But, in the Home Telephone case Chief Justice White took occasion to review

all of the cases thought to tend in that direction and make a final statement of the law as follows:

"Before demonstrating the accuracy of the statement just made as to the essential result of the proposition relied upon by a reference to decided cases, in order that the appreciation of the cases may be made more salient, we contrast the meaning as above stated, which the 14th Amendment would have if the proposition was maintained, with the undoubted significance of that Amendment as established by many decisions of this Court.

"1. By the proposition the prohibitions and guaranties of the Amendment are addressed to and control the states only in their complete governmental capacity, and as a result give no authority to exert Federal judicial power until, by the decision of a court of last resort of a state, acts complained of under the 14th Amendment have been held valid, and therefore state acts in the fullest sense. To the contrary the provisions of the Amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to the states, but also to every person, whether natural or judicial, who is the repository of state power. By this construction the reach of the Amendment is shown to be coextensive with any exercise by a state of power, in whatever form exerted.

"2. As previously stated, the proposition relied upon presupposes that the terms of the 14th Amendment reach only acts done by State officers which are within the scope of the power conferred by the state. The proposition, hence, applies to the prohibitions of the Amendment the law of principal and

agent governing contracts between individuals, and consequently assumes that no act done by an officer of a State is within the reach of the Amendment unless such act can be held to be the act of the state by the application of such law of agency. In other words, the proposition is that the Amendment deals only with the acts of state officers within the strict scope of the public powers possessed by them, and does not include an abuse of power by an officer as the result of a wrong done in excess of the power delegated. Here again the settled construction of the Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed, and deals with such a contingency. It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amendment is that where an officer or other representative of a state, in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the state has authorized the wrong is irrelevant, and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power.

"To speak broadly, the difference between the proposition insisted upon and the true meaning of

the Amendment is this: that the one assumes that the Amendment virtually contemplates alone wrongs authorized by a state, and gives only power accordingly, while in truth the Amendment contemplates the possibility of state officers abusing the powers lawfully conferred upon them by doing wrongs prohibited by the Amendment. In other words, the Amendment looking to the enforcement of the rights which it guarantees and to the prevention of the wrongs which it prohibits, proceeds not merely upon the assumption that states, acting in their governmental capacity, in a complete sense, may do acts which conflict with its provisions, but, also conceiving, which was more normally to be contemplated, that state powers might be abused by those who possessed them, and as a result might be used as the instrument for doing wrongs, provided against all and for every such possible contingency. Thus, the completeness of the Amendment in this regard is but the complement of its comprehensive inclusiveness from the point of view of those to whom its prohibitions are addressed. Under these circumstances it may not be doubted that where a state officer, under an assertion of power from the state, is doing an act which could only be done upon the predicate that there was such pawer, the inquiry as to the repugnancy of the act to the 14th Amendment cannot be avoid by insisting that there is a want of power. That is to say, a state officer cannot, on the one hand, as a means of doing a wrong forbidden by the Amendment, proceed upon the assumption of the possession of state power, and at the same time, for the purpose of avoiding the application of the Amendment, deny

the power and thus accomplish the wrong. To repeat: for the purpose of enforcing the rights guaranteed by the Amendment when it is alleged that a state officer, in virtue of state power, is doing an act which, if permitted to be done, *prima facie* would violate the Amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority."

Home Telephone & Telegraph Co. v. Los Angeles, 227 U .S. 286, 287, 288, 289; 57 L. ed. 515.

We submit that this authority completely meets and refutes the fine-spun and sophistical argument of counsel for appellants and settles that all of the contentions made in his brief against appellees' bill are unsound.

Counsel for appellants bases his entire argument upon the supposed force of certain language used by Justice Brandeis in the Keokuk & Hamilton Bridge Company case and attempts to make that language establish that if there is a remedy under the laws of a State for an enfringement of a constitutional right protected by the Federal Constitution, and also protected by the State Constitution, the injured party cannot resort to the Federal Courts and obtain relief in the exercise of their original jurisdiction, but must wait until he has exhausted his remedies under State laws, thus abrogating the paramount jurisdiction of Federal Courts and de-

priving them of their original jurisdiction to vindicate the Consttution and laws of the United States for which such jurisdiction was established. Such contention is patently in conflict with the opinion of Justice White. This Court never intended language used in the opinion of the Bridge case to be used or applied for the opinion carefully emphasized what should be considered before entering upon a discussion of the merits in these words:

> "Whether the bill sets forth a case for equitable relief is the only question requiring consideration."

If other things were considered, as counsel argues, then they were considered in the way of *obiter dicta*, and not in decision of the question the Court had so carefully stated. Moreover, as we have already shown, the allegations of the bill in the Keokuk & Hamilton Bridge case were so meagre and barren of the statement of pertinent fact that the Court could not treat it as a reasonable effort at statement of a cause of action, and doubtless that is what the Court attempted to emphasize in the language which counsel for appellants attempts to misapply. One point suggested by the opinion would have been ample to warrant the view of the Court that the bill was totally wanting of proper allegations, which deficiency was stated in these words:

> "The amount of the tax payable was, therefore, the only matter in controversy. Under such

circumstances a plaintiff seeking an injunction must aver payment or tender of the amount of taxes confessedly due, or at least offer to pay such amount as the Court may find to be justly and equitably due. *People's National Bank* v. *Marye*, 191 U. S. 272, 48 L. ed. 180, 24 Sup. Ct. Rep. 68; *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, 38, 52 L. ed. 78, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757. The bill contains no such allegation."

Keokuk & Hamilton Bridge Co. v. *Salm*, 258 U. S. 126; 66 L. ed. 499.

Respectfully submitting these views and citations of authority as conclusive against all contentions of appellants we insist that the United States District Court decided accurately that the bill states a case within the equitable jurisdiction of the United States District Court. That was the only question submitted to that Court, and, therefore the decree rendered upon confession of the facts stated in the bill should be affirmed.

Geo. B. Gillespie.
Attorney for Appellees.

APPENDIX OF ILLINOIS TAX LAWS.

This appendix includes the pertinent provisions of the constitution and statutes of Illinois in relation to the assessment and collection of taxes, both upon the general property of the State and property of such corporation as are assessed by the State Tax Commission and formerly by the State Board of Equalization.

EQUALITY PROVISION OF CONSTITUTION PUTTING ALL PHYSICAL PROPERTY IN ONE CLASS FOR TAXATION.

1 "The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; * * *"

Cahill Ill. Stat. 1923, Sec. I. Art. IX, p. 32.

ROLLING STOCK OF RAILWAYS MADE PERSONAL PROPERTY BY CONSTITUTION.

Section 10, of Article XI, of the Constitution of 1870, provides:

2 "The rolling stock, and all other movable property belonging to any railroad company or corporation, in this State, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the General Assembly shall pass no law exempting any such property from execution and sale."

BOARD COULD NOT REDUCE AGGREGATE VALUATION IN STATE.

3 "but said board shall not reduce the aggregate assessed valuation in the State; neither shall it increase said aggregate valuation, except in such an amount as may be reasonably necessary to a just equalization, and not exceeding one per cent. on such aggregate assessed valuation; but this rule shall not apply to railroad property."

Jones & Addington Ill. Stat. 5507, Par. 9324, Sec. 105.

SWORN LISTS OF RAILROAD PROPERTY TO BE RETURNED.

4 Section 40 of the Revenue Law provides:

"Every person, company or corporation, owning, operating or constructing a railroad in this State, shall return sworn lists or schedules of the taxable property of such railroad, as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value on the first day of April of the year in which it is listed."

Cahill Ill. Stat. 1923, p. 2840.

5 Section 41, requires the filing of sworn schedules with the County Clerk,

"showing the property held for right of way, and the length of the main and all side and second tracks and turnouts in such county, and in each city, town, and village in the county, through or into which the road may run, and describing each tract of land, other than a city, town, or village lot, through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the

right of way. * * * When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board; but the company shall, during the month of April, annually, report the value of such property, by the description set forth in the next section of this Act, and note all additions or changes in such right of way as shall have occurred."

Cahill Ill. Stat. 1923, p. 2840.

"RAILROAD TRACK" IS REAL ESTATE.

6 Section 42, provides:

"Such right of way, including the superstructures of main, side or second track and turnouts, and the stations and improvements of the railroad company on such right of way, shall be held to be real estate for the purposes of taxation, and denominated 'railroad track,' and shall be so listed and valued; and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village, and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing————acres, more or less. * * *"

Cahill Ill. Stat. 1923, p. 2841.

HOW VALUE OF "RAILROAD TRACK" ASSESSMENT DISTRIBUTED FOR ASSESSMENT.

7 Section 43, provides:

"The value of the 'railroad track' shall be listed and taxed in the several counties, towns,

villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city bears to the whole length of the road in this State, except the value of the side or second track, and all turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county, town, village, district or city in which the same are located."

Cahill Ill. Stat. 1923, p. 2841.

ALL MOVABLE PROPERTY INCLUDING ROLLING STOCK PERSONAL PROPERTY. HOW ASSESSED.

8 Section 44, provides:

"The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, 'rolling stock'. Every person, company or corporation owning, constructing or operating a railroad in this State, shall, in the month of April, annually, return a list or schedule ,which shall contain a correct detailed inventory of all the rolling-stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, baggage cars, house (horse) cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars."

Cahill Ill. Stat. 1923, p. 2841.

ROLLING-STOCK TO BE LISTED IS TAXING DISTRICTS IN PROPORTION TO MAIN TRACK MILEAGE.

9 Section 45, provides:

"The rolling-stock shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track used or operated, * * *" therein.

Cahill Ill. Stat. 1923, p. 2841.

PROPERTY OTHER THAN "RAILROAD TRACK" AND "ROLLING STOCK," MANNER OF ASSESSMENT.

10 Section 46, provides that the tools and materials for repairs and other personal property of the railroad, except rolling-stock shall be listed and assessed where it is located.

Cahill Ill. Stat. 1923, p. 2841.

11 Section 47, provides that all real estate, including the stations and other buildings and structures thereon other than that denominated "railroad track", belonging to any railroad shall be listed as lands and lots as the case may be in the county, town or village, and provision is made for the assessment of all other property of railroads than "railroad track" and "rolling stock" by local assessors.

Cahill Ill. Stat. 1923, p. 2841.

12 Section 48, provides for an additional schedule to enable the Board of Equalization to assess the capital stock of railroads.

Cahill Ill. Stat. 1923, p. 2842.

PENALTY FOR FAILURE TO FILE SCHEDULES.

13 Section 49, requires that schedules shall be filed with the Auditor of Public Accounts, and with the local assessors and fixes a penalty for failure to do so.

Cahill Ill. Stat. 1923, p. 2842.

AUDITOR TO LAY SCHEDULES AND STATEMENTS BEFORE BOARD.

14 Section 50, provides:

"The Auditor shall, annually, on the meeting of the State Board of Equalization, lay before said board the statements and schedules

herein required to be returned to him; and said board shall assess such property in the manner hereinafter provided."

Cahill Ill. Stat. 1923, p. 2842.

RAILROAD TAX BOOK, WARRANT FOR COLLECTION.

15 Section 51, requires the County Clerk to procure at the expense of the county a record book properly ruled and headed in which to enter the railroad property of all kinds as listed for taxation, and that he should enter the valuation as assessed, corrected and equalized in the manner provided by the act; and, that he should extend the tax thereon upon such equalized value against the property liable therefor.

"And at the proper time fixed by this Act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use."

Cahill Ill. Stat. 1923, p. 2842.

POWERS AND DUTIES OF TAX COMMISSION.

"The Tax Commission shall: * * *

16 "(3) Prescribe general rules and regulations, not inconsistent with law, for local assessment officers relative to the assessment of property for taxation, which general rules and regulations shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction;

"(4) Prescribe or approve the form of blanks for schedules, returns, reports, complaints, notices and other documents, files and records authorized or required by any provision of law relating to the assessment of property, or by any rule and regulation of the commision and all assessing officers shall use true copies of such blank forms;

"(5) Assess the railroad property denominated "railroad track" and "rolling-stock"; * * *

"(7) Equalize the valuation and assessment of property throughout the State between the different counties of the State and fix the aggregate amount of the assessment for each county upon which taxes shall be extended.

Cahill Ill. Stat. 1923, p. 2851.

Section 3 of the Act confers duties upon the Commission as follows: * * *

"(6) To order in any year a re-assessment of all real and personal property or real or personal property, or any class of personal property, in any county, or in any assessment district thereof, which in its judgment such re-assessment is desirable or necessary, and for that purpose to cause such re-assessment to be made by the local assessment officers, and to cause it to be substituted for the original assessment;"

"(7) To take testimony and proofs under oath and to require the production of books, papers and documents pertinent to any assessment, investigation or inquiry and for that purpose to subpoena and compel the attendance of witnesses;"

Cahill Ill. Stat. 1923, p. 2852.

Section 10, of the Act provides:

"Any person feeling himself aggrieved by any assessment made by the Tax Commission may appeal to the Circuit Court of the county in which such property or some part thereof is situated, for the purpose of having the lawfulness of such assessment inquired into and determined.

17 "The person taking such appeal shall file with the Tax Commission written notice of such appeal, which notice shall state in full the grounds of such appeal. Such notice of appeal shall be filed within ten days after such assessment is made and notice given thereof. Thereupon the Tax Commission shall prepare and transmit to the clerk of the court to which such appeal is taken a copy of such notice of appeal and a copy of all evidence, documents, papers, books and files pertaining to such appeal, which copies shall be certified to as correct by the Director of France. The appeal shall be heard without formal pleadings upon the record so certified by the Tax Commission. Appeals shall lie from the judgment of the Circuit Court to the Supreme Court. The remedy by appeal herein provided for shall not be construed to be exclusive."

Cahill Ill. Stat. 1923, p. 2853.

18 Section 18 of the Act defines the equalizing power of the Commission:

"The Tax Commission shall act as an equalizing authority. It shall examine the abstracts of property assessed for taxation in the several counties as returned by the county clerks and the original assessments made by it, and shall equalize the assessments as in this Act provided. The Tax Commission may so lower or raise the total assessed value of property in any county as returned by the county clerk as shall make

the property in such county bear a just relation to the assessed value of property in other counties. The total amount of such increase or decrease in any one county shall not exceed ten per cent of the total assessed value of all property in the State as returned for purposes of taxation. The Tax Commission shall not reduce the aggregate assessed valuation in the State; nor shall it increase such aggregate valuation, except in such amount as may be necessary to a just equalization."

Cahill Ill. Stat. 1923, p. 2854.

GENERAL TAX BOOKS.

19 Section 123 provides:

"The county clerk shall, annually, make out for the use of collectors, in books to be furnished by the county, correct lists of taxable property, as assesed and equalized."

Cahill Ill. Stat. 1923, p. 2857.

20 Then follows in Sections 124-131, inclusive, directions for making up the collector's books, and Section 132 is as follows:

"To each collector's book a warrant, under the hand and official seal of the county clerk, shall be annexed, commanding the collector to collect from the several persons named in said book the several sums entered in the column of totals opposite their respective names. The warrant shall direct the collector to pay over the several kinds of taxes that may be collected by him to the respective officers entitled thereto, less the compensation for collection allowed him by law.

Cahill Ill. Stat. 1923, p. 2858.

WHEN TAX BOOKS DELIVERED.

21 Section 135 requires

"The respective county clerks shall, on or before the twentieth day after the first day of December, annually, or as soon thereafter as the collectors are duly qualified, deliver to them the books for the collection of taxes; and it shall be the duty of the collectors, within such time, or as soon thereafter as they are qualified, to call at the clerk's office and receive said books. The tax book, provided for collecting all taxes charged against railroad property and the capital stock of telegraph companies, shall be delivered to the county collector within the same time, annually, or as soon thereafter as he is qualified."

Cahill Ill. Stat. 1923, p. 2859.

DUTIES OF TOWN AND DISTRICT COLLECTORS.

22 Section 136:

"To each town or district collector's book a warrant, under the hand of the county clerk and seal of his office, shall be annexed, commanding such town or district collector to collect from the several persons named in said town or district collector's book, the several sums of taxes therein charged opposite their respective names."

Cahill Ill. Stat. 1923, p. 2859.

DISTRESS TO COLLECT PERSONAL TAX.

23 Section 137, provides:

"In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's book shall neglect or refuse to pay his personal property tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such

town or district collector on or before the tenth day of March next ensuing."

Cahill Ill. Stat. 1923, p. 2859.

LEVIES TO COLLECT TAXES.

24 Section 156, provides:

"In case any person, company or corporation shall refuse or neglect to pay the taxes imposed on him or them, when demanded, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of the person, company or corporation who ought to pay the same."

Cahill Ill. Stat. 1923, p. 2863.

POWER TO LEVY AND COLLECT PERSONAL TAX AFTER RETURN OF WARRANT.

25 Section 161 of the Revenue Law provides:

"The power and duty to levy and collect any tax due and unpaid, shall continue in and devolve upon the county collector and his successors in office, after his return and final settlement until the tax is paid; and the warrant attached to the collector's book, shall continue in force and confer authority upon the collector to whom the same was directed.

METHODS OF ENFORCING COLLECTION OF TAXES.

26 Section 173, provides:

"Each town or district collector shall particularly note, in his returns to the county collector, all cases of personal property tax that he was unable to collect, which can be made from real estate of the persons owing such tax."

Cahill Ill. Stat. 1923, p. 2866.

27 Section 183 provides for the collection of delinquent personal tax from real estate and further provides,

> "When it becomes necessary to charge the tax on personal property against real property, the county collector shall select for that purpose some particular tract or lots of real property owned by the person owing such personal property tax; and in his advertisement for judgment and sale, shall designate the particular tract or lots of real property against which such personal property tax is charged, and in the list filed for judgment, the same facts shall be shown, and the court shall take cognizance thereof, and give judgment against such tract or lots of real property, for such personal property tax."

Cahill Ill. Stat. 1923, p. 2868.

LIEN ON REAL ESTATE FOR UNPAID TAXES.

28 Section 253:

> "The taxes upon real property, together with all penalties, interests and costs that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and incumbrances, from and including the first day of May in the year in which taxes are levied until the same are paid; which lien may be foreclosed in equity, in any court of competent jurisdiction, in the name of the People of the State of Illinois, whenever taxes for two or more years, upon the same description of property, shall have been forfeited to the State, and may be sold under the order of the court by the person having authority to receive State and county taxes, with the same notice to interested parties and right of redemption from said sale as is now provided by law, and in conformity with Section four (4) and five (5) of Article IX, of the Constitution of this State. In proceedings to foreclose the tax lien on any real property,, the amount due on the collector's books against the said property shall be *prima facie* evidence of

the amount of taxes against the real property. When any taxes are collected in any such foreclosure proceedings, they shall be paid to the county collector, to be distributed by him to the respective authorities entitled thereto.

Cahill Ill. Stat. 1923, p. 2884.

WHEN LIEN ATTACHES TO PERSONAL PROPERTY.

29 Section 254:

"The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the collector."

Cahill Ill. Stat. 1923, p. 2884.

PERSONAL PROPERTY LIABLE FOR TAX ON REAL ESTATE

30 Section 255:

"Personal property shall be liable for taxes levied on real property, and the real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax cannot be made out of the personal property; but the tax on real property may be made out of personal property, at any time after the tax becomes due, by any collector having the tax books in his hands by distraint and sale, in the manner provided in this Act: *Provided*, the judgment against real property, for non-payment of taxes thereon shall not be prevented by showing that the owner thereof was possessed of personal property subject to distraint; and no person shall be subject to have his personal property distrained and sold for tax on real estate, which may have been listed and assessed in his name, when he makes oath, or otherwise satisfies the collector, that he did not own such real property on the preceding first day of May."

Cahill Ill. Stat. 1923, p. 2884.

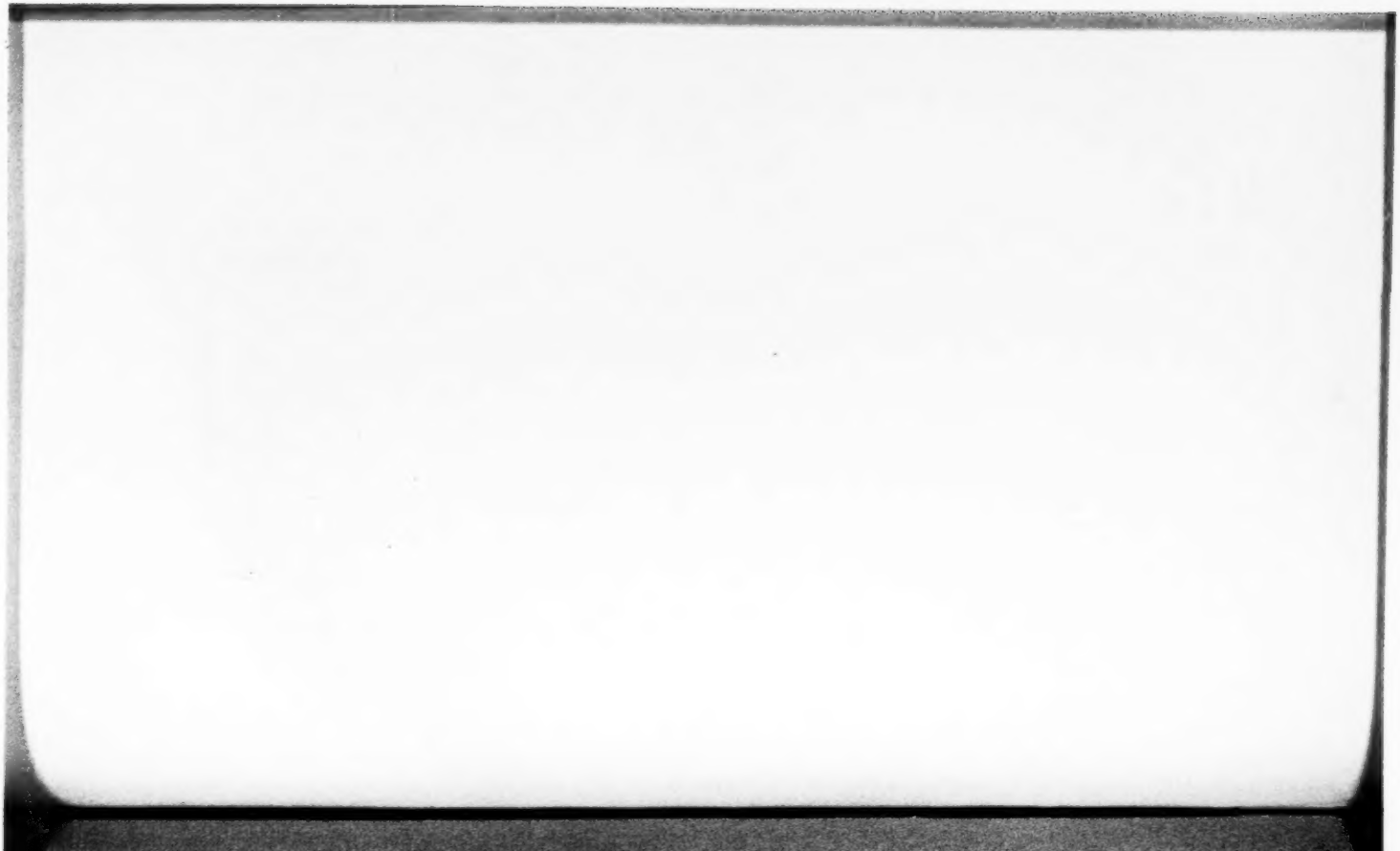
PERSONAL LIABILITY FOR FAILURE TO PAY TAX.

31 Section 230:

"The county board may, at any time, institute suit in an action of debt in the name of the People of the State of Illinois in any court of competent jurisdiction for the whole amount due for taxes and special assessments on forfeited property; or any county, city, town, school district or other municipal corporation to which any such tax or special assessment may be due, may, at any time, institute suit in an action of debt in its own name, before any court of competent jurisdiction, for the amount of such tax or special assessment due any such corporation on forfeited property, and prosecute the same to final judgment. The county board may also, at any time, institute suit in an action of debt in the name of the People of the State of Illinois, in any court of competent jurisdiction, against any person, firm or corporation, for the recovery of any personal property tax due from such person, firm, or corporation, and in any such suit for the recovery of personal property tax, the return of the county collector that such taxes are delinquent, shall be *prima facie* evidence that such taxes are due and unpair, but the fact that such taxes are due and unpaid may be proven by other competent testimony. This act shall apply to all taxes heretofore levied against any person, firm or corporation and now upon any assessment book or roll, and on the sale of any property following such judgment on execution or otherwise, any such county, city, town, school district or other municipal corporation, interested in the collection of said tax, may become purchaser at such sale of either real or personal property, and if the property so sold is not redeemed (in case of real estate) may acquire, hold sell and dispose of the title thereto, the same as individuals may do under the laws of this State, and in any such suit or trial for forfeited taxes, the fact that real estate or

personal property is assessed to a person, firm or corporation, shall be *prima facie* evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof."

Cahill Ill. Stat. 1923, p. 2880.



Supreme Court, U. S.
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No. 131

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry; and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants.

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM F. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and THE MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Southern District of Illinois.

REPLY BRIEF OF APPELLEES ON THEIR MOTION TO DISMISS FOR WANT OF JURISDICTION OR TRANSFER CAUSE.

GEO. B. GILLESPIE,
Attorney for Appellees.

SUBJECT INDEX

Adequate Remedy must be in Federal Courts....21, 22

Admissions of Appellants' Brief..... 2

Allegations of Bill Misrepresented..... 9

Appellants' Admission of Federal Question..... 3

Appellants Ignore Federal Decisions on Due Process of Law..... 20

Appellants' Theory of Due Process Contrary to Law 26

Apt Words not used to Express Present Claims of Appellant 23

Arbitrary Action—Want of Due Process.....17, 18

Bill in Keokuk Bridge Case..... 31

Board of Equalization Represents State..... 17

Brief of Argument..... 6

Brief Point to Import Federal Question..... 4

Cases Cited to Support Theory of Appellants not Applicable 28

Decree Mis-stated by Appellant..... 11

Departure from Constitutional Requirements..... 17

Due Process of Law.....15, 16

Federal Courts of Paramount Jurisdiction..... 14

Inconsistency of Language used in Motion Dismissed 4

Judicial Code, Section 238..... 6

Motion to Dismiss Special, not given Effect General Demurrer 24

Prayer of Bill Misconstrued, by Appellants..... 10
"Rolling Stock"—Personal Property..... 13
Theory of Appellant 8
Statement in Reply..... 1

TABLE OF CASES CITED.

Page

Arrowsmith v. Gleason, 129 U. S., 86 21

Bordens Conds. Milk v. Baker, 177 Fed. 906 22

C. B. & Q. R. Co. v. Bautsch, 129 Ill. App., 23 24

Chicago R. Co. v. Chicago, 166 U. S. 226 15

Chicago Union Traction Co. v. State Board, 114 Fed. 565 17

Chicago Union Traction Co. v. State Board, 114 Fed. 566 19

Constitution, Sec. 10, Art. IX 13

Ex parte Virginia, 100 U. S. 339 16

Giozza v. Turman, 146 U. S. 657 16

Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 286 27

Hovey v. Elliott, 167 U. S. 409 16

Keokuk & Hamilton Bridge Co. v. Salm, 256 U. S. 122 ..28

Mississippi Mills v. Cohn, 150 U. S. 202 21

McGehee Due Process of Law, p. 26 15

McGehee Due Process of Law, p. 27 16

National Surety Co. v. State Bank, 120 Fed. 593 22

Odin Coal Co. v. Tadlock, 216 ill., 624 24

Revenue Law, Sec. 255 12

Smith v. Reeves, 178 U. S. 436 21

Smyth v. Ames, 169 U. S. 466 21

U. S. Judicial Code, Sec. 238 29

Wells Fargo & Co. v. Nevada, 248 U. S. 191 28

West Chicago St. Ry. v. Krueger, 168 Ill., 586 24

Yickwo v. Hopkins, 116 U. S. 356 16

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Appellants,

v.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and THE MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

REPLY BRIEF OF APPELLEES ON THEIR MOTION TO DISMISS FOR WANT OF JURISDICTION OR TRANSFER CAUSE.

STATEMENT.

The Brief of Appellants in opposition to the motion of Appellees to dismiss, concedes that the statements of fact in Appellees' Brief are correct. This involves the following admissions:

(1) That the original motion to dissolve the temporary injunction was based solely upon special grounds enumerated and did not raise the question of federal jurisdiction.

(2) That the question actually in issue and passed upon by the Court was whether upon the face of the bill facts were stated to bring the case within the jurisdiction of a court of equity.

(3) That the jurisdictional question was neither raised nor certified to this Court, and, therefore, is here not directly involved as a question presented to or adjudicated by the court below.

(4) That the memorandum of the District Judge, notifying counsel of his decision on the second motion to dismiss, distinctly stated that the only question passed upon by the Court was whether there was equity on the face of the bill.

Counsel for appellants specifies the grounds set forth in that motion on page 2 of his brief, and it clearly shows that only the question of *equity jurisdiction* was raised on that motion. It is true that in the first paragraph it is alleged that the only vice of the assessments of the Board of Equalization and the Tax Commission charged in the bill was, "discriminatory over-valuation of complainants' property," and in the second paragraph

claims that there was an adequate remedy at law, but he construed the words of his motion in its last paragraph according to their natural import in these words, as follows:

> "Wherefore, the defendants respectfully pray that the order of reference may be set aside, the answer of defendants withdrawn and leave to file this motion granted, and **upon the final hearing of this motion the same may be sustained and the bill of complainants dismissed for want of equity.**"

It is a familiar doctrine that mere discrimination in making an assessment of property for taxation is not a ground for the interposition of a court of equity, but there must, in addition to discrimination, be either actual or constructive fraud in making the assessment.

Counsel for appellant not only recognized that no federal question was raised at the hearing in the Court below, but if such question had been raised, expressly waived it when he said on page 56 of his brief:

> "First. There must be federal jurisdiction or a federal question. This requirement is met in all of the cases" (referring to the cases just previously discussed in the brief), "as well as in the case at bar, with the averment that the taxpayer is about to be deprived of his property without due process of law."

The only effort of counsel to avoid the force of the record and his admission is to quote the following words from page 10 of his brief:

> "Are the facts alleged in the bill sufficient to give a federal court equitable jurisdiction to enjoin the collection of the taxes in question on the ground that such collection would amount to a taking of the property of appellees without due process of law and constitute a denial of the equal protection of the laws; and are the facts, as stated in the bill, sufficient to show that the taxpayer has no adequate remedy at law?"

It is true that statement is made, but subsequently on page 56 he limits his attack upon the ruling of the District Court to the contention that the taxpayer had an adequate remedy at law. This is but language of appellants' brief, but it only has reference to the distinction between jurisdiction at law and in equity. However, the authorities conclusively show that counsel cannot in this Court, either by his brief or by an assignment of errors, import a question into the case which the record of the trial court does not present, and it is plain from the record that this case did not involve the construction or application of the Constitution of the United States within the meaning of Section 238 of the Judicial Code. Nevertheless, counsel by artificial reasoning attempts to show that a federal question was involved in his conten-

tion that there was an adequate remedy under the constitutional laws of the State of Illinois, which we shall show is directly in conflict with the former decisions of this Court; and, in order to base such an argument as that upon the record, counsel for appellants was put to the extreme necessity of misconstruing the allegations of our bill to be directed at a proposed action of the judicial department of the State of Illinois, in accordance with the Constitution and laws of the State, which will clearly appear not to be the case by a casual reading of the bill. The complaint is of the conduct of the State Board of Equalization and the Tax Commission, and not of the courts, nor of the Constitution or laws of the State.

BRIEF OF ARGUMENT.

It is apparent from the Brief of Appellants that their counsel misconceived the jurisdiction of this Court and the method of invoking it. The United States District Court is given jurisdiction, "where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand ($3,000.00) dollars," (a) arising "under the Constitution and laws of the United States." Yet not in every case brought in that Court is the question "in controversy" or "involved," whether the suit arises under the Constitution and laws of the United States. If the question of federal jurisdiction is raised and controverted, then the question of jurisdiction is "in controversy" or "involved," but if conceded that question is not "in controversy" and is, therefore, not a question which can thereafter be raised in the United States Supreme Court, because of the express language of Section 238 of the Judicial Code, which provides for the Appellate jurisdiction of that Court, and confers the same in any case that involves the construction or application of the Constitution of the United States. As we have shown by our original brief, where that question is not in issue and the case is decided upon some other ground, then it cannot be said that a

federal question was "in controversy" or "involved." Whether the construction of the Constitution was involved in the District Court is not determined from the allegations of the pleadings, if the record shows that it was not in fact in issue; and before this Court would be warranted in considering any case upon the theory that a federal question was involved, it should appear upon the face of the record that it was insisted by the defendant that no constitutional question was involved upon the one hand, and the complainant must have contended that such question was involved upon the other; and that must have been an issue between them which was not waived or agreed to, but controverted. In other words, the record must show an actual issue and contention between the parties upon that subject, which required the District Court to construe or apply the Constitution judicially, but counsel for appellants try to raise this issue by asserting that in their insistence that there was an adequate remedy under the laws of the State of Illinois raised the question of whether the property of appellees was about to be taken without due process of law. A little far-fetched, we submit, and we shall see that their whole theory is not only contrary to the record, but in conflict with the law.

The argument of counsel for appellants, based upon the allegations of appellees' bill, which it is alleged show

an adequate remedy under the laws of the State of Illinois, is founded upon a total misconception of the allegations of the bill, the relief prayed and the decree entered.

Appellants' counsel try to convince this Court that the bill complains only of the taxing officers, and that the injunction was only to restrain them from enforcing the valid laws of the State of Illinois and afford due process of law; and seek to lead this Court to ignore the allegations of the bill which charge directly and affirmatively that the want of due process of law was in the arbitrary, wilful and unlawful conduct of the State Board of Equalization and the Tax Commission in making grossly excessive assessments of appellee's property, well-knowing that the values fixed thereon for the purposes of taxation were many times in excess of the fair cash value required by the provisions of the Constitution and the laws of Illinois as the basis of assessment, and grossly discriminatory againt appellants, and in favor of all personal property systematically valued by local assessors at more than 30 per cent below its fair cash value for assessment. To establish this contention they quote from paragraph IX of the Bill, (Record Page 46), but even that paragraph shows that the allegation is directed against the State of Illinois in the exercise of its taxing power through the State Board of Equalization, the Tax

Commission and the other taxing officers of the State. The averment is,

> "that in the proceedings aforesaid, and in the manner and form aforesaid the **State of Illinois** by and through the action of its **State Board of Equalization and State Tax Commission** and other taxing officers is threatening to and will, unless said taxing officers are restrained, * * * deny * * * equal protection of the Constitution and laws, etc."

To say that the construction placed on this language by counsel for appellants is strained and unreasonable, but temperately expresses the fact, and reading the allegations of the bill referred to by the words of the paragraph, "in the proceedings and in the manner and form aforesaid," this Court will be surprised that such a construction as that of counsel for appellants should have been placed upon the bill by one who is acquainted with its allegations.

They are equally mistaken and uninformed as to the prayer of the bill and the decree of the Court. Quotations from them in appellants' brief are designed to limit them to a prayer for relief against the application for judgment and sale for delinquent taxes and it is said the decree only granted such relief.

In addition to the relief mentioned in the quotation from the prayer of the bill, on page 5 of appellants'

brief, on record page 47 will be found the following additional prayer:

> "and determine the taxes, equitably due to the said several taxing districts upon a lawful assessment of said property, and upon a determination thereof order and decree the full satisfaction of any tax remaining due and unpaid, and upon the payment thereto perpetually enjoin and restrain the said defendants and their successors in office from collecting said unlawful taxes, interests, penalties and costs found to be in excess of that legally due to each of the said defendants upon such accounting."

The decree, in addition to the words quoted on pages 6 and 7 of appellants' brief, pertinently contains the following among the findings (Record, pp. 81-82):

> "3. That the complainants, prior to the commencement of this suit, tendered to each of the said defendants all of the taxes legally due to them, respectively, as county collectors of their respective counties, and such tax was accepted by them.
>
> "4. That all other taxes, interests, penalties and costs charged and extended against the property of the complainants for the years 1917, 1918, 1919 and 1920, in each of the several counties of Marion, Clinton, Washington, Perry and Randolph, in the State of Illinois, are excessive, fraudulent and void, and were extended upon an assessment made by the Board of Equalization for the years 1917 and 1918 and by the Tax Commission of the State of Illinois for the years 1919 and 1920, in violation of the Fourteenth Amendment to the Constitution of

the United States of America, in that in the assessment, levy and extension of said tax the complainants were denied the equal protection of the laws by the State Board of Equalization and the taxing officers of the State of Illinois, and the assessment, levy and extension of said tax was and is an attempt to and would take the property of the said complainants without due process of law.

"5. That the complainants are entitled to an injunction as prayed restraining the said defendants and each of them from the collection of said tax, and to have the injunction heretofore issued herein made permanent."

And in the decretal part of the order is the following:

"* * * that the preliminary injunction granted herein be and the same is hereby continued in full force and virtue." (P. R. 85.)

The preliminary injunction (Rec. p. 58) restrains said county collectors "from attempting to enforce the collection of any of said taxes from any of the said property, or from the property of either of the said complainants, for any delinquent taxes for any of the years 1917 to 1920, inclusive." It therefore appears that not only were the taxing officers restrained from applying for judgment for delinquent taxes in the manner described in the bill, but from taking personal property by distress, as they might have done under the

provisions of Section 255 of the Revenue Law, which provides:

> "Personal property shall be liable for taxes levied on real property, and the real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax cannot be made out of the personal property; but the tax on real property may be made out of personal property, at any time after the tax becomes due, by any collector having the tax books in his hands by distraint and sale, in the manner provided in this Act: *Provided*, the judgment against real property, for non-payment of taxes thereon, shall not be prevented by showing that the owner thereof was possessed of personal property subject to distraint; and no person shall be subject to have his personal property distrained and sold for tax on real estate, which may have been listed and assessed in his name, when he makes oath, or otherwise satisfies the collector, that he did not own such real property on the preceding first day of May."
>
> Cahill Ill. Stat. 1923, p. 2884, Sec. 255.

Counsel for appellants has stated and reiterated in his brief that the complainants' bill does not describe personal property as being taxed, and that all taxes levied was upon real estate. Reference to Paragraph 3 of the Bill will show that "rolling stock" and all other personal property is included, and the averments of the bill all relate to the property described in that paragraph.

Reference to Section 10 of Article XI of the Constitution of Illinois, Cahill's Illinois Statutes 1923, p. 37, would have disclosed to counsel for appellants the following Constitutional provision:

> "The rolling stock, and all other movable property belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the General Assembly shall pass no law exempting any such property from execution and sale."

We have drawn attention to these misconceptions and mistatements not in an effort to refute them as having any possible bearing upon the question before this Court, but to show that counsel for appellants is entirely mistaken as to what the record actually contains and as to what the intent of our bill is. His whole argument is predicated upon the assumption that we are complaining of taxing officers for attempting to enforce the Constitution and valid laws, and he assumes that if the constitution and laws of Illinois are in harmony with the Constitution and laws of the United States that deprives the Federal Courts of their jurisdiction to enforce the Federal constitution and laws made in pursuance thereof, if violated by any individual, member of a board or other body exercising authority under the Constitution and

laws of the State in denying to any citizen due process of the law or equal protection of the law.

It is true that in every such case there may be a remedy under the laws of the State, but that does not deprive the Federal Courts of their paramount jurisdiction to enforce the Constitution and laws of the United States whenever they are violated without waiting to see what the State may do on account of a violation of its Constitution and laws.

If the principle that counsel for appellants advances was correct, then the Federal Courts would never have jurisdiction to enforce the due process and equal protection clauses of the Fourteenth Amendment until the State remedies had been exhausted, and, therefore, the United States District Court would never have jurisdiction of such a case, because at the point of exhausting State remedies the appellee would always go directly to the Supreme Court of the United States.

It will be observed that in his discussion of the subject of due process of law counsel for appellants has said much about due process of law so far as court procedure is concerned, but remains silent as to what is required to constitute due process of law in a State Board of Equalization or a State Tax Commission or other person or body exercising State power.

These questions have been discussed by this and other Federal Courts, but counsel for appellants seem to have overlooked, misconceived, or perceived, the force of such discussions and has not referred to them.

The allegations of complainants' bill on the subject of due process of law relate entirely to the action of the State Board of Equalization and the State Tax Commission. McGehee on due process of Law says:

> "While the English provision exists solely against executive action, under our system of paramount written constitutions, to which all departments of the government are equally subject, the provision extends alike to the executive, judicial, and legislative activities of the states and the nation."
>
> McGehee Due Process of Law, p. 26;
>
> See also, *Chicago R. Co.* v. *Chicago*, 166 U. S., 226.

Due process of law and law of the land are phrases indicating practically the same thing. Mr. Webster, in the Dartmouth College case, gave a definition to due process of law or law of the land which endures to this time and is as follows:

> "By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of general rules which govern society."

This Court has said:

"Due process of law within the meaning of the (Fourteenth) Amendment is secured if the laws operate on all alike and do not subject the individual to any arbitrary exercise of the powers of government."

Giozza v. *Turman*, 148 U. S., 657;
Yick Wo v. *Hopkins*, 118 U. S., 356.

This Court also said:

"They, (the words of the Fourteenth Amendment here involved), have reference to the state actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The Constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. **Whoever, by virtue of public positions under a State government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the Constitutional inhibition; and as he acts in the name of and for the State, and is clothed with the State's power, his act is that of the State.** This must be so or the Constitutional inhibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

McGehee on Due Process of Law, p. 27;
Ex. p. Virginia, 100 U. S. 339;
Hovey v. *Elliott*, 167 U. S., 409.

In a case somewhat similar to this in which the State Board of Equalization being mandamused by the Supreme Court to re-assemble and make an assessment of property in accordance with the law, arbitrarily and wilfully assessed the same without the exercise of judgment or discretion under circumstances which indicated either that the board acted under fear of contempt of the Supreme Court, or out of resentment because they had been commanded to re-assemble and do their work over. After discussing that situation Judge Grosscup, sitting as a circuit judge, deduced the correct principle as follows:

> "The sum of it all is that by whatsoever causes brought about the reassessment complained of did not in our opinion express the **real judgment of the State Board as an independent tribunal and were, therefore, in effect fictitious judgments for the impeachment of which, somewhere, the law holds out opportunity to the parties injured.**"
>
> *Chicago Union Traction Co.* v. *State Board of Equalization*, 114 Fed., 565.

He then concluded that as the constitution and laws of Illinois provided due process of law and the Board of Equalization wilfully and intentionally departed therefrom and assessed the property involved in that suit at a grossly excessive valuation as compared with the assessment of other property of the State without exercising any judgment, but arbitrarily, that such action was a

denial of due process of law, that the Board of Equalization represented the State, its action was State action, and its want of the exercise of judgment from whatever cause gave to the aggrieved taxapayer the right to resort to the federal courts under protection of the due process of law provision of the Fourteenth Amendment of the Constitution. His discussion of the subject is most interesting and illuminating and is as follows:

> "Due process of law, as applied to the cases under consideration, is the authorized procedure whereby the property of the individual can be taken by the state. It includes the initial authority to levy taxes; the purpose to which the money thus raised is to be devoted; and the instrumentalities that distribute the burden upon the citizens. Ours is a government of laws, and not of individual officers, or of boards or of men. Any substantial departure, therefore, in the collection of taxes, from the law, either as to the authority for the tax, or its purpose, or the provisions for the just distribution of its burdens, is a departure from due process of law; and the enforced collection of taxes in the laying and distributing of which there is a substantial departure from law, is the depriving of the citizen of his property without due process of law.
>
> "A substantial step in the taxing process as fixed by the law of Illinois as a step essential to the distribution of the burdens of taxation, is the decision and judgment of the State Board of Equalization. The board's place in the taxing system is that of a quasi-judicial body. Its judgment affects, as

keenly as that of any court, the property interests collectively of the several districts of the State, and directly and individually of the persons and corporations owning franchises.

"No court can by its judgment grasp more completely what would otherwise remain the property of the individual. In no other tribunal can there be found apter illustration of the power of the State to compel the individual to deliver up his property under stress of law. It needs no argument to show that power such as this is only exercised rightfully when exercised judicially. The prime quality of every judgment, without which it is no judgment, is, that it is the final thought of the judge on the subject submitted, unaffected by extrinsic influences. This implies freedom of mind—not merely theoretically, but practically—the freedom of mind that does not fear, that has no wish of its own, that sees nothing not seen through the senses of the law. Judgments honestly made up in such an atmosphere, though subject to review for error, are due process of law. Judgments affected by fraud or fear, however solemnly entered are nothing, when weighed by the constitutional guaranties thrown around liberty and property."

Chicago Union Traction Co. v. *State Board of Equalization*, 114 Fed., 566.

These authorities are not cited for the purpose of showing to the Court that a federal question was involved in the court below. That can only be determined from an inspection of the record, but they answer the falla-

cious position of counsel for appellants, and show that the vital allegations of our bill relate to a real want of due process of law in the action of the Board of Equalization and Tax Commission, in assessing complainants' property, as charged in paragraphs V to VIII, inclusive, of complainants' bill.

Counsel have said a great deal concerning remedies at law under the Statutes of Illinois, and insisted that if there is a remedy thereunder there can be no remedy in exercise of the original jurisdiction of the United States District Court in the enforcement of the provisions of the Federal Constitution. A mere statement of this proposition discloses its absurdity. That a government having independent and paramount power and jurisdiction cannot vindicate its constitution and laws because the suitor might resort to an inferior jurisdiction is an absurdity which one would not expect to find in properly coordinated government, and that it is not found in this government is beyond all controversy.

A long argument is made in the original brief and glimpses of the theory there advanced are presented by this brief to establish that there is an adequate remedy at law under the Statutes of Illinois for a violation of the Illinois Constitution and Statutes, and that, therefore, although the Constitution and Statutes of the United States have also been violated by the same act,

there can be no remedy in the federal courts until State remedies have been exhausted. And, in discussing that doctrine, it has been repeated many times that there is an adequate remedy at law in the procedure devised for the enforced collection of taxes, and that inasmuch as such procedure is due process of law, there is an adequate remedy at law in Illinois.

This whole theory is predicated upon a misconception of what is meant by adequate remedy at law as related to the jurisdiction of federal courts of equity, and what is meant by the original jurisdiction of federal courts. The adequate remedy at law that will deprive a federal court of equity jurisdiction must exist in federal courts, otherwise it is plain that on the theory of counsel for appellants the federal courts could be deprived of all of their original equity jurisdiction by providing legal remedies to which they might resort in the several states. So, the law is settled to be:

> "An adequate remedy at law created by State statute and available in State courts cannot oust the federal courts of their jurisdiction in equity."
>
> *Smith* v. *Reeves*, 178 U. S., 436;
> *Smyth* v. *Ames*, 169 U. S., 466;
> *Mississippi Mills* v. *Cohn*, 150 U. S., 202;
> *Arrowsmith* v. *Gleason*, 129 U. S. 86.
>
> "It is an absence of an adequate remedy at law in the **national** courts and that alone which conditions jurisdiction in equity in those courts."

National Surety Co. v. *State Bank*, 120 Fed. 593;
56 CCA 656;
61 L. R. A. 394.

"A Federal Court of equity following the chancery precedents does not inquire about the remedies available in the State Court, (which for this purpose is a foreign tribunal), but whether a **Federal Court of law** offered an adequate remedy; and this inquiry is confined to the remedies in the Federal Courts no matter how ancient may be the remedies offered by the State. Congress may, of course, change the federal remedies from time to time; the change may be made by original legislation or by adopting the remedies of the State, but the test is always whether the remedy under examination is available in the **Federal Courts**. If it is not, its existence does not affect the equitable jurisdiction of the Circuit Court."

Bordens Conds. Milk v. *Baker*, 177 Fed. 906; 101 CCA 186.

The contention, that the insistence of appellants' counsel that the complainants had an adequate remedy under the laws of Illinois, was tantamount to a denial of the allegations of complainants' bill that the State of Illinois was about to take appellees' property without due process of law is predicated upon the theory that the bill was directed solely at Court procedure under Illinois Statutes, which we have shown is not true by directing attention to the allegations of the bill and to the words of the decree of the Court. So, if that is what counsel meant in the contention there was an adequate

remedy **at law,** they not only failed to employ apt words to express their intentions but sought to make an issue upon allegations which the bill does not in fact contain. If at the time counsel for appellants filed the motion to reconsider the previous order of the Court overruling the motion to dissolve the preliminary injunction and dismiss the bill, they wanted to raise the question whether the allegations of want of due process of law were insufficient, is it not strange they did not say so? And if they then thought that the bill was framed on the theory that proposed court action in conformity with valid laws was in violation of the due process clause, and that a denial of such allegations would put in issue the federal question of want of due process of law, why did they not use apt words to express that idea, instead of assigning the ground, **"Complainants have an adequate remedy at law?"** Why did they not say, "an adequate remedy under the laws of Illinois" instead of specifying **"remedy at law,"** as distinguished from remedies **in equity?** In view of the allegations of the bill, the specifications of the additional motion to dismiss, the order of the Court overruling the second motion to dismiss, the memorandum of the Court showing that counsel acquiesced in and did not contest the allegations of the bill charging want of due process of law at the argument of that motion, and the express admission of appellants' original brief, page 56, that the allegation of want of due process of law is

sufficient, does not appear that the present contentions are an after thought?

If the motion of appellants to reconsider and dismiss on the ground that there is an adequate remedy at law by necessary implication raises the federal question, whether the bill contains sufficient allegations of want of due process of law, then it would be immaterial whether the motion to reconsider and dismiss be regarded as in effect a general or special demurrer; for, in that case the federal question would have been raised; but they deem it important to assert that the motion to reconsider and dismiss must be given the effect of a **general demurrer.** What is the difference? Why a general demurrer puts in issue all the material allegations of the bill, while a special demurrer puts in issue only such allegations as it questions. On appeal or error, a motion that specifies the grounds upon which it is based will always be treated as having restricted the mover to the grounds stated therein in the court of review.

W. Chicago St. Ry. Co. v. *Krueger* 168 Ill., 586;
Odin Coal Co. v. *Tadlock*, 216 Ill., 624;
C. B. & Q. R. Co. v. *Bautsch* 129 Ill. App. 23.

Both motions to dismiss are based alone upon special grounds, with no words questioning the general sufficiency of the bill. It is not now contended that there was any effort to question the sufficiency of the allegations of the bill that in making the alleged fraudulent assess-

ments, the taxing officers of Illinois, denied to the complainants the equal protection of the law, nor can anything in the record be tortured into an indication that such question was raised or considered; therefore it was wholly unnecessary for the District Court to consider whether the allegations of want of due process of law were sufficient, conceding for the argument that question was properly raised, which it clearly was not, for in that case, jurisdiction would be sustained by unchallenged averments in the bill. This state of the record clearly closes the lips of appellants upon this question.

Aside from all this, however, the whole legal premises of counsel's argument has been cut away by the previous decisions of this Court. There is nothing more definitely settled than that what remedies may exist under the laws of Illinois for a violation of the Constitution of that State by denying due process of law, is wholly immaterial to the jurisdiction of the Federal Courts. In the Home Telephone & Telegraph Co. case, Chief Justice White fully analyzed the present contentions of counsel for appellant and held them unsound. He fully reviewed the previous relevant opinions of this Court, and stated the law so clearly, and upon such a basis of sound reasoning and common sense that there can be no justification for reopening the question, and if counsel had in fact advanced the theory he now is attempting to construe into

the record, in the District Court, it would have been met by a citation of the Home Telephone & Telegraph case, and would in view of that case have been held to be frivolous.

The law as settled by the Home Telephone & Telegraph case is:

> "1. By the proposition the prohibitions and guaranties of the Amendment are addressed to and control the states only in their complete governmental capacity, and as a result give no authority to exert Federal judicial power until, by the decision of a court of last resort of a state, acts complained of under the 14th Amendment have been held valid, and therefore state acts in the fullest sense. To the contrary, the provisions of the Amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to the states, but also to every person, whether natural or juridical, who is the repository of state power. By this construction the reach of the Amendment is shown to be coextensive with any exercise by a state of power, in whatever form exerted.
>
> "2. As previously stated, the proposition relied upon presupposes that the terms of the Fourteenth Amendment reach only acts done by state officers which are within the scope of the power conferred by the state. The proposition, hence, applies to the prohibitions of the Amendment the law of principal and agent governing contracts between individuals, and consequently assumes that no act done by an officer of a state is within the reach of the amend-

ment unless such act of the state by the application of such law of agency. In other words, the proposition is that the amendment deals only with the acts of state officers within the strict scope of the public powers possessed by them, and does not include an abuse of power by an officer as the result of a wrong done in excess of the power delegated. Here again in the settled construction of the amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed, and deals with such a contingency. It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrong which the amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the amendment is that where an officer or other representative of state, in the exercise of the authority with which he is clothed, misuses the power possessed to do a wrong forbidden by the amendment, inquiry concerning whether the state has authorized the wrong is irrelevant, and the federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power."

Home Tel. & Tel. Co. v. *Los Angeles*, 227 U. S., 286, 287; 57 L. Ed., 514, 515.

Assuming that the present contentions of counsel for appellants are justified by the record and well founded

in the law, both of which we think we have shown not to be the case, still in making the contention, as they allege that there was an adequate remedy at law, or under the laws of Illinois, they would have but raised a jurisdictional question, and no jurisdictional question has been certified to this Court, therefore, at all events this case, even in that event would have had to be dismissed or transferred.

Two cases are cited as the basis for the fanciful theory advanced by counsel for appellants: *Keokuk & Hamilton Bridge Company* v. *Salm*, 256 U. S., 122 and *Wells Fargo & Co.* v. *Nevada*, 248 U. S., 191. Neither of these cases has the remotest application to the question now before the Court. The Keokuk & Hamilton Bridge case is cited to sustain a contention directly in the teeth of the able opinion of Chief Justice White in the Home Telephone case, which clearly it does not purport to do. Justice Brandeis wrote his opinion in the Bridge case upon the facts presented by that record which bear no analogy to the facts of the case at bar. There a motion to dismiss for want of equity had been sustained, and this Court affirmed the decree of the District Court. That action was based on the averments of that bill, and no lawyer can examine its allegations without coming to the conclusion reached by this Court. It wholly failed to state a case either within the jurisdiction of the District

Court as a federal court, or showing the complainant was entitled to relief in a court of equity. There was nothing stated but some general conclusions of the pleader. For convenient reference we print the allegations of that bill in the back of this reply as an appendix. Its deficiencies will be readily seen. There was no motion to dismiss in that case, and, therefore, the questions we present here were not raised.

In the Wells Fargo case the attack was upon the constitutionality of a statute which it was claimed did not provide for due process of law, because it did not require notice of the assessment, and it was held that since the tax could not be collected without judgment in a Court, in which proceeding summons must be served upon the taxpayer, the want of notice of the assessment did not render the law invalid as a denial of due process of law. We are unable to perceive that anything said in that case has bearing here. In that case there was no claim of wilful and arbitrary departure by State officers from the due process of law provided by the Constitution and Statutes of the State as here, and, therefore, the principles applicable there have no application here. The contention was that to follow the law of Nevada would conflict with the Constitution of the United States. Here it is contended that the departure of the State Board of Equalization and the Tax Commission from the method

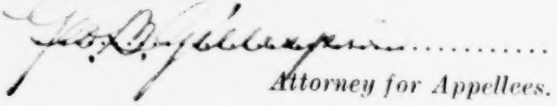
of assessment prescribed by the Constitution and laws of the State was a violation of the due process clause of the State Constitution as well as the due process and equal protection clauses of the Federal Constitution.

Finally, it was in no event necessary for the United States District Court to pass upon whether there was in fact due process of law or equal protection of the law in making the assessment of complainants' property. This Court has held many times that where a federal question is in good faith raised in the pleadings that confers jurisdiction, and if the case upon the whole shows that the plaintiff or complainant is entitled to relief upon other grounds, the federal question may be left undecided and the relief be granted. The record shows that is precisely what was done in this case, and that with the acquiescence and subsequent ratification and approval of counsel for appellants. The principle here invoked was applied in *Green* v. *Louisville & Interurban Company*, 244 U. S., 499. See, also, *Osborn* v. *U. S. Bank*, 9 Wheat., 739; *Bors* v. *Reston*, 111 U. S., 258; *Kansas* v. *Atchison R. R. Co.*, 112 U. S., 416; *Pacific R. Co., Removal cases*, 115 U. S., 11; *United States* v. *Old Settlers*, 149 U. S., 468.

We respectfully submit that the record plainly shows that there was no construction or application of the Constitution of the United States by the District Court

as necessary under Section 238 of the Judicial Code to confer jurisdiction upon this Court; that the jurisdiction of the District Court as a federal court was conceded by appellants at the hearing on the second motion to dismiss, and expressly waived on page 56 of their original brief; that the positions and arguments now advanced to avoid that situation are unsound, shifty and sophistical; and

We therefore pray a dismissal or transfer of this appeal for want of jurisdiction.



Attorney for Appellees.

APPENDIX

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DIVISION OF THE
SOUTHERN DISTRICT OF ILLINOIS.

KEOKUK & HAMILTON BRIDGE COMPANY,
Complainant,
v
FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ARCH C. WILLIAMS, J. H. HELMS AND CHAS. S. TYLER,
Defendants.
} IN EQUITY.

SYNOPSIS OF BILL.

(Jurisdictional Averments in Black Type.)

AFTER THE ADDRESS THE STATEMENT OF THE CORPORATE NAME, THE ORGANIZATION OF THE CORPORATION AND THE CONSTRUCTION AND LOCATION OF THE BRIDGE, AND AN AVERMENT THAT THE SAME WAS ASSESSED BY A CERTAIN DESCRIPTION FOR THE YEAR 1918 AT $100,000.00, THE BILL CONTAINS THE FOLLOWING AVERMENTS:

Your Orator further shows unto your Honors, that the defendants as individuals and in their official capacities have assessed your Orator's property as alleged on a basis of about 150 per cent valuation, whereas in truth and in fact the defendants as individuals and assessors of this County and State arbitrarily, intentionally and systematically as shown, assessed the property of individ-

uals and of corporations within the sphere of duty at a total taxable value of said property of forty percent of its fair cash value; that the fact that such systematic assessment upon said basis annually for many years past has been a matter of public notoriety in the state.

Your Orator further shows that under the laws and Constitution of the State of Illinois all property real and personal must and shall be uniformly assessed at such fair and equal valuations, that the defendants by their acts as individuals and official capacity as herein assessing and seeking to collect taxes against your Orator on **this unfair, unequal and discriminatory valuation** and in defiance of the Constitution and laws of said State and denying to your Orators the equal protection of the laws and seeking to take Orators property without due process of law within the meaning of the 14th Amendment to the Constitution of the United States.

(Averment that bridge should have been assessed by Board of Equalization.)

Whereas defendants have intentionally, systematically and persistently assessed other classes of property of similar sharacter and value at about forty per cent of such fair cash value and thereby is and has deprived complainant of the equal protection of the laws and taking complainant's property without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

That unless restrained and enjoined by this Honorable Court the defendants will individually and as such officials proceed in every way to becloud by judgment or otherwise complainants' said property, and will cause judgments to be entered upon said alleged delinquent list against complainants' said property, and to have execution issued and complainants' property sold at execution to satisfy such illegal and void taxes, and in all these and other ways irreparably injure and destroy complaints' bridge and railroad track and property.

Wherefore complainant prays that the defendants and each of them, whether as individuals or as officials, in said taxing matters, be enjoined and forever restrained from so doing. Your orator further shows that since the acts and doings of defendants are now going on and will result in the wrongful acts herein complained of before this litigation may terminate, your orator prays that an injunction *pendente lite* herein, and such other relief as the equities of the case may require.

To the end, therefore, that the defendants may show if they can why your orator, complainant herein, should not have relief herein prayed for, and may make true and perfect answers accordingly to the best of their respective knowledge and belief to the several matters herein set forth, the same as if they would specifically here repeat, but not under oath, answer, under oath being waived.

May it please your Honors to grant to your orators a writ of subpoena and respondendem, issuing out of and under the seal of this Honorable Court to the said defendants and each of them, as such defendants commanding them and each of them to be and appear and make answer under this bill of complaint and to perform and abide by such order and decree or decrees as the Court may see fit in equity and good conscience to decree herein.

peals is accordingly *Affirmed.*

WILSON, COUNTY COLLECTOR OF TAXES FOR THE COUNTY OF MARION, ET AL. *v.* ILLINOIS SOUTHERN RAILWAY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

No. 131. Argued January 3, 1924.—Decided January 14, 1924.

1. When the jurisdiction of the District Court rests solely upon a claim under the Constitution, the merits are open upon a direct appeal to this Court. P. 576.
2. A railroad company, alleging that its property had been overvalued by a state board, erroneously and fraudulently, and out of all proportion to other property, sued the collectors of five counties, among which the assessment had been apportioned, to restrain them from proceeding in their respective county courts to collect the taxes. *Held*, that in view of the many suits involved and the insuperable difficulty of determining through them the proper amount and apportionment of the assessment, the plain-

tiff's remedy by defense of those proceedings was not an adequate remedy at law. P. 576.

3. In a suit in the federal court to restrain collection of taxes upon the ground of fraudulent overassessment, a state statute authorizing review of assessments by appeal to a state court, but not clearly applicable where fraud is the ground, cannot be accepted as an adequate remedy ousting the equity jurisdiction. P. 577.

Affirmed.

Appeal from a decree of the District Court enjoining collection of taxes.

Mr. June C. Smith, with whom *Mr. Frank F. Noleman*, *Mr. Andrew J. Dallstream*, *Mr. Charles F. Dew*, *Mr. Hugh V. Murray*, *Mr. H. H. House*, *Mr. Judson E. Harriss* and *Mr. Logan F. Hachman* were on the brief, for appellants.

Mr. George B. Gillespie for appellees.

Mr. Justice HOLMES delivered the opinion of the Court.

This is a bill in equity to restrain the collection of taxes for the years 1917, 1918, 1919 and 1920, upon the track and rolling stock then belonging to the Illinois Southern Railway Company. It alleges that the property was erroneously and fraudulently overvalued, out of all proportion to the other taxable property in the State, and invokes the jurisdiction of the District Court on the ground that the Fourteenth Amendment of the Constitution is infringed. It alleges further that the sums that properly could have been charged have been paid, that if the additional amounts demanded could be recovered at all after payment it would be only by a multiplicity of suits against the taxing bodies of the several counties where the collections are made. It is argued that, in any proceeding at law in these counties, it would be impossible to secure a uniform or any adequate readjustment of the total valu-

ation, which is made by a state board, and so that equity only can afford adequate relief. The bill prays that the defendants, who are the collectors for five counties, may be restrained from applying to their respective county courts for judgments under the summary proceedings provided by statute for the collection of taxes on real estate (Cahill, Ill. Stat. 1923, c. 120, § 191), and that the Court will determine the amounts, if any, remaining equitably due and unpaid. The defendants ultimately relied upon a motion to dismiss for want of equity. The District Court granted an injunction as prayed, and the case is here on the single question whether the plaintiffs had an adequate remedy at law. When the jurisdiction of the District Court rests solely upon a claim under the Constitution, the merits are open on a direct appeal to this Court. *Holder* v. *Aultman*, 169 U. S. 81, 88. *Northwestern Laundry* v. *Des Moines*, 239 U. S. 486, 491. *McMillan Contracting Co.* v. *Abernathy*, *ante*, 438.

The appellants rely mainly upon *Keokuk & Hamilton Bridge Co.* v. *Salm*, 258 U. S. 122. In that case a bill charging fraudulent overvaluation was dismissed and the dismissal was affirmed by this Court on two grounds, that there was an adequate remedy at law and that the plaintiff had not tendered or offered to pay the amount confessedly due. The latter ground is absent here. As to the former it seems to us that the present case is to be distinguished. *Keokuk & Hamilton Bridge Co.* v. *Salm* arose upon an assessment of real estate by county assessors in a single county, as to which the remedies available were pointed out. Here the assessment was of property in five counties, by the State Board of Equalization for 1917 and 1918, and by its successor the State Tax Commission for the two later years. Assuming that in each of the counties before the tax could be collected a judgment must be obtained in the county court in a civil suit and that in such suits the defendants, the present plaintiffs,

could set up the facts here relied upon, as in the *Keokuk Co.'s Case*, not only would those suits be many, but there would be insuperable difficulty in determining what the proper assessment against the whole road should be and in apportioning the due share to the county concerned. This difficulty would recur in each of the five counties with not improbably different results in each. It seems to us that the right of full defence in those suits, if it exists, is not an adequate remedy at law. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 38–40. *Kirby* v. *Lake Shore & Michigan Southern R. R.*, 120 U. S. 130, 134.

We have stated what the appellants relied upon. Perhaps however it should be added that after the substitution of the State Tax Commission for the Board of Equalization, a provision was made for an appeal from the Commission to the Circuit Court of the County "for the purpose of having the lawfulness of such assessment inquired into and determined" upon a record of the evidence and proceedings before it prepared by the Commission, with a further appeal to the Supreme Court. The statute provides that the remedy by appeal shall not be construed to be exclusive. Cahill, Ill. Stat. 1923, c. 120, § 10, p. 2853. How far such an appeal would be adequate upon a charge of fraud against the Commission may be doubted, and the adequacy of a remedy at law must be clear. *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282, 285, 286.

Decree affirmed.